

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

APPELLANT'S BRIEF AND JOINT APPENDIX

IN THE
UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12-239

*United States Court of Appeals
For the
District of Columbia Circuit*

JESSIE L. VENDEMLA,
WIDOW OF THOMAS VENDEMLA,

v.

(1) ANTHONY J. CRISTALDI,
PHILIP P. CRISTALDI,
JOSEPH P. CRISTALDI,
PARTNERS, T/A CRISS BROS. AND COMPANY;

(2) EMPLOYERS MUTUAL LIABILITY INSURANCE
COMPANY OF WISCONSIN, INC.;

(3) P. J. DONOVAN,
DEPUTY COMMISSIONER,
D. C. COMPENSATION DISTRICT,
BUREAU OF EMPLOYEES COMPENSATION,
Appellees.

FILED

AUG 12 1954

Joseph W. Stewart
CLERK

Appeal from the United States District Court for the
District of Columbia

BENJAMIN F. ROSSNER,
910 17th Street, N.W.,
Washington 6, D. C.
Attorney for Appellant

No. 12-239

STATEMENT OF QUESTION PRESENTED ON APPEAL

1. Was the death of the deceased employee traceable to the aggravation of an existing heart condition?

2. Did the Deputy Commissioner commit an error of law in not considering or making a finding as to whether or not the disease suffered by the deceased employee was or was not aggravated by his employment, which resulted in the employee's death?

3. Does the Deputy Commissioner in his finding of fact substantially set forth the facts on the record considered as a whole?

4. Did the Deputy Commissioner afford the surviving wife the statutory presumption that her claim comes within the provisions of the Workmen's Compensation Act?

5. Did the Deputy Commissioner resolve doubts in favor of the deceased employee's widow?

6. Was substantial evidence submitted to show that the death of the decedent was not directly traceable to aggravation of a pre-existing disease in the course of the decedent's employment?

7. Was the application of the law by the Deputy Commissioner to his finding of fact contrary to law?

8. Did the trial court err in affirming the action of the Deputy Commissioner?

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JESSIE L. VENDEMIA,
WIDOW OF THOMAS VENDEMIA,
Appellant,

v.

- (1) ANTHONY J. CRISTALDI,
PHILIP P. CRISTALDI,
JOSEPH P. CRISTALDI,
PARTNERS, T/A CRISS BROS. AND COMPANY;
- (2) EMPLOYERS MUTUAL LIABILITY INSURANCE
COMPANY OF WISCONSIN, INC.;
- (3) P. J. DONOVAN,
DEPUTY COMMISSIONER,
D. C. COMPENSATION DISTRICT,
BUREAU OF EMPLOYEES COMPENSATION,
Appellees.

Appeal from the United States District Court for the
District of Columbia

JURISDICTIONAL STATEMENT

This is an appeal by the appellant from an order entered on the 1st day of April, 1954 by the United States District Court for the District of Columbia, denying appellant's

motion for summary judgment and granting the appellees' respective motions for summary judgment and dismissing the appellant's complaint to set aside an order of the Deputy Commissioner for the District of Columbia.

This court has jurisdiction of this appeal under Title 36-501, D. C. Code (1951) which makes applicable to the District of Columbia the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901, et seq.

STATEMENT OF CASE

On May 27, 1952, Thomas Vendemia was an employee of the Anthony J. Cristaldi, Philip P. Cristaldi and Joseph Cristaldi, Partners, t/a Criss Bros. and Company. On said day Thomas Vendemia performed services for the employer as an ornamental iron worker at Mary Washington College, Fredericksburg, Virginia.

That Thomas Vendemia had been engaged as an ornamental iron worker for approximately twenty five years and that he had been employed with Criss Bros. and Company in this type of work since June, 1946.

That on May 27, 1952 from 7:30 a.m., to 11:15 a.m., Thomas Vendemia, the employee, was working with a fellow employee placing templates for railings on concrete stairs. That the employer's truck was parked about 35 feet from the building in which the stairs were located.

That the stairs located in the building upon which Thomas Vendemia and fellow employee were placing templates and iron rails consisted of the following:

6 steps from building basement to the first landing, 14 steps from the first landing to the first floor, 10 steps from the first floor to the second landing and 10 steps from the second landing to the second floor.

That the making of the templates consisted of taking pieces of $\frac{1}{2}$ inch by $1\frac{1}{2}$ inch flat iron approximately 16 to 17 feet in length, each piece weighing 50 to 75 pounds and required that same be laid on the stairs and marked to form

patterns to insure true fabrication. The templates did not fit properly and the fitting adjustments required the deceased and fellow employee to carry the templates up and down the steps numerous times.

That in the making of the templates it was necessary to heat the iron with acetylene torch and bend it with an anvil and hammer. In the event that a template carried up the steps did not fit, it was necessary that it be marked and carried back to the truck, heated with the acetylene torch, and be bent with a hammer and then be carried back up the steps. Such process was repeated until a true measurement was obtained.

That from 7:30 a.m., to 11:15 a.m., on May 27, 1952 Thomas Vendemia the employee with a fellow employee carried templates, each weighing 50 to 75 pounds, up and down 40 steps, thirty times or more and, additionally, Thomas Vendemia, with a fellow employee, carried templates, each weighing 50 to 75 pounds up and down 20 steps, thirty or forty times. The unusual number of trips up and down the steps were required by the reason of the templates not having been properly made at the shop.

The decedent in addition to carrying weight going up and down the steps as aforerelated, moved heavy iron rails on the landing, runway and balcony and unloaded 70 to 80 pounds of lead to be used with electric welder.

Thomas Vendemia, from 11:15 a.m., to 12:00 noon, on May 27, 1952 with a fellow employee engaged in attempting to fit assembled rails into sleeves; that they carried two rails, weighing about 150 pounds each, from the basement to the first floor (20 steps). That considerable difficulty was had in placing the two rails in the sleeves and it was necessary to try same numerous times before the railings would fit into the sleeves.

That from 12:00 noon to 12:30 p.m., Thomas Vendemia stopped work to eat his lunch and that during his lunch period he complained to his fellow employee of pain in his

chest and went to secure a drink of water and that he still thereafter did not feel well.

That at about 12:30 p.m., Thomas Vendemia returned to work with his fellow employee and set up rails on horses, plumbed a rail and wedged it. That during this time he obtained two drinks of water in the building and complained to his fellow employee of not feeling well and at about 1:15 p.m., after a conversation with his fellow employee he went to the employer's truck and lay down where he was found dead a short time later by his fellow employee. That he died at 1:30 p.m., on May 27, 1952 of coronary thrombosis.

That subsequent to the death of Thomas Vendemia, his widow, Jessie L. Vendemia, filed a claim for death benefit on her own behalf under the provisions of the Longshoremen's and Harbor Worker's Compensation Act.

That thereafter on June 4, 1953 a hearing was commenced in this matter before P. J. Donovan, Deputy Commissioner, District of Columbia Compensation District, Bureau of Employee's Compensation. On June 17, 1953, without the presence of the Deputy Commissioner in Fredericksburg, Virginia, the deposition of Dr. John Eugene Cole was taken and that a final hearing was had before P. J. Donovan, Deputy Commissioner on September 9, 1953, who on the 5th day of November, 1953 made and filed his findings of facts and order rejecting the widow's claim.

That during the time of employment of her deceased husband by Anthony J. Cristaldi, et al., Partners t/a Criss Bros. and Company, had secured a policy of Workmen's Compensation Insurance covering its employees including the appellant's deceased husband, and that such policy of compensation insurance was in full force and effect at the time of the death of Thomas Vendemia.

On November 18, 1953 a complaint was filed in the United States District Court for the District of Columbia to set aside the order of the Compensation Commission rejecting the widow's claim and on April 1, 1954 the appellees' mo-

tion for a summary judgment was granted; appellant's motion for summary judgment denied, and the complaint was dismissed.

This appeal is taken from the order of the United States District Court for the District of Columbia of April 1, 1954.

STATUTES INVOLVED

36-501 D. C. Code (1951), 33 U.S.C. 901.

STATEMENT OF POINTS

1. The deceased employee was acting in the course of his employment at the time of his death and his death arose out of the aggravation of a pre-existing heart condition.

2. No consideration or finding was made as to whether or not the disease suffered by the deceased employee was or was not aggravated by his employment which did or did not result in the employee's death.

3. That the findings of fact herein does not truly disclose the facts, causes, circumstances and medical factors surrounding the death of Thomas Vendemia and all such evidence has been omitted and not considered.

4. That evidence of carrying weight up and down steps as well as other work activities of the decedent before and after lunch is not in the findings of facts and was apparently not considered.

5. That the decedent met his death from coronary thrombosis while engaged in the work of the employer and the Commission has not afforded the surviving wife the statutory presumption that her claim comes within the provisions of the Workmen's Compensation Act.

6. There was no substantial evidence submitted to the Commission to show that the death of the decedent was not directly traceable to aggravation of a pre-existing disease in the course of the decedent's employment.

7. The Deputy Commissioner's findings of fact are not supported by substantial evidence on the record considered as a whole.

8. That the Deputy Commissioner's rejection is unsupported by substantial evidence on the record considered as a whole.

SUMMARY OF ARGUMENT

The death of Thomas Vendemia occurred while he was at work and resulted by reason of aggravation of a pre-existing condition.

ARGUMENT

I

Thomas Vendemia died while at work. It is conceded that he died of a coronary thrombosis which is a degenerative disease. Medical testimony established that work activity could aggravate such condition, nevertheless the Deputy Commissioner in his findings of fact gave no consideration thereto and merely states in his finding of fact " * * * that the death of the employee was not caused by an injury arising out of and the course of employment" and his rejection likewise states "that the death of Thomas Vendemia on May 27, 1952 did not result from injury arising out of and in the course of his employment." The evidence adduced required the Deputy Commissioner to make specific findings as to whether or not the disease suffered by the deceased employee was or was not aggravated by his employment which did or did not result in the employee's death. In *Robinson v. Bradshaw*, 92 U.S. App. D.C. 218, 206 F. 2d 435, the Deputy Commissioner made specific findings as to whether death resulted from an aggravation of a pre-existing condition and in *Wimmer v. Hoage*, 67 App. D.C. 129, 90 F. (2d) 373 it is stated "It would have been more satisfactory if the Deputy Commissioner—as we have

had occasion to admonish him before—had made specific findings based on testimony introduced, for precisely that is what the act and regulations contemplate, and, as we think require him to do. Because ordinarily such findings are necessary to enable us to say whether his award is in accordance with law. * * *

II

The findings of fact of the Deputy Commissioner shows the deceased employee ate lunch on the date of his death from 12 noon to 12:30, that he returned to work and died of a coronary thrombosis at 1:30 p.m. It is admitted, therefore, that the decedent was acting in the course of his employment. As to how he met his death it is agreed that the decedent died of a coronary thrombosis and Dr. Miller, a heart specialist states that coronary heart disease is a progressive disease that goes over a period of time and attacks frequently occur after a full meal and that the work activity on the part of the deceased employee on May 27, 1952 could have aggravated such an existing heart condition (Jt. App. 40, 41). Drs. Ritchie, Cole, Walsh and Reisinger each respectively testified that the work of the decedent could aggravate an existing heart condition (Jt. App. 13, 52, 55, 61).

III

Admittedly the strenuous work activity of the decedent on the day of his death could aggravate a coronary thrombosis condition and no substantial evidence has been submitted to show the decedent's sudden death was unrelated to the employment. Since the evidence does not support a finding of absence of aggravation by the employment, and since the presumption and evidence require the contrary conclusion, it follows that the death arose out of and in the course of employment. 33 U.S.C. 920(a) provides this presumption. *Fidelity and Casualty Company of New York v. Burris*, 61 App. D.C. 230, 59 F (2d) 1042 states in part,

“The underlying purpose of all compensation laws is to provide money indemnity in case of injury where there is no assignable fault. Accidents in industry are inevitable, and the enactment of compensation laws grew out of a general recognition of a duty owing by society to an injured employee to secure him protection, and this the act seeks to accomplish through the means of insurance built up by premiums paid by employers. Where there is a doubt, it should be resolved in favor of the injured employee or his dependent family * * *” (see also: *President and Directors of Georgetown University College v. Stone*, 61 App. D.C. 201 59 F (2d) 875;

Hartford Accident and Indemnity Company v. Cardillo, 72 App. D.C. 54, 112 F (2d) 11 states in part “That the injury occurs in the course of employment strengthens the presumption that it arises out of it.” Moreover, “where there is a doubt, it should be resolved in favor of the injured employee or his dependent family.” *Caldwallader v. Sholl*, 89 App. D.C. 286, 196 F (2d) 14 states in part, “Having in mind the basic purpose of the Compensation Act we think this means any attack, whether an initial one or one following a symptom-free period, if it arises naturally out of the employment is an ‘injury.’ There is nothing in the act to suggest a contrary intention.”

IV

The findings of fact by the Deputy Commissioner omits facts, causes, circumstances, and medical factors which led up to the employee's death.

That the testimony of the fellow employee, Melvin Arthur Tyler, who was working with the decedent on the day of his death, shows the decedent went up and down the steps of the building where the decedent was working some 70 or 80 times during the morning of the day of his death, and that the decedent went up and down the stairs from the basement to the 2nd floor (approximately 40 steps) about

30 times and that on all occasions he was carrying a template with him that weighed between 50 to 75 pounds. (Jt. App. 27.)

That in addition to the above decedent with Tyler, immediately before lunch, carried two rails that weigh 150 pounds from the basement to the 1st floor (incorrectly related in Commissioner's findings). (Jt. App. 29.)

That in addition to the steps factor and weight carrying upon same by the decedent the findings of fact do not show the work activity of the decedent with the templates after same were taken up the steps. (Jt. App. 30.)

That the decedent, Thomas Vendemia, worked subsequent to lunch and that is not contained in the findings of fact. (Jt. App. 37.)

That there is no showing in the findings of fact as to the consideration accorded the medical evidence submitted. That each doctor admitted that strenuous work activity could aggravate an existing heart condition and it was conceded by testimony that the decedent had an existing heart condition which when aggravated did or could have caused his death.

That the findings of fact made herein do not in any way support a rejection of the claim for death benefits.

That it has been clearly established that the death resulted from circumstances which evidence indicates were directly traceable to aggravation of an illness or disease, in the course of employment. Additionally, no substantial evidence that such aggravation was not due to the decedent's employment was submitted to the Commission.

Aggravation of a pre-existing condition unrelated to the employment resulting in death is compensable (*Robinson v. William Bradshaw*, 92 U.S. App. D.C. 218).

V

The decedent was 50 years old and has been continuously engaged as an iron worker for 28 years. Testimony of the

widow (Jt. App. 15) and son (Jt. App. 17) shows the decedent for several months prior to his death was arriving home exhausted from his work. The decedent's co-worker, Tyler, in his testimony sets forth the strenuous labor and work done by the decedent which resulted in his death. In *Hoage v. Royal Indemnity Company*, 67 App. D.C. 145, 90 F (2d) 387, an award was sustained to an insurance adjuster based upon excessive exertion at work and the court stated in part, " * * * His case is comparable to that of a manual laborer whose heart collapses as a result of long continued physical strain or overwork resulting from excessive exertion." See also in *Commercial Casualty Insurance Co. v. Hoage*, 64 App. D.C. 159, 75 F (2d) 677, it is stated "It has been held a number of times, and we think correctly, that an accidental injury may occur notwithstanding the injured is then engaged in his usual and ordinary work, and likewise that the injury need not be external. It is enough if something unexpectedly goes wrong within the human frame." The record considered as a whole shows that the decedent's duties of employment did contribute as a reasonable producing cause to the death of the employee during course of his employment.

VI

The findings of fact and conclusion of law of the Deputy Commissioner are contrary to law.

CONCLUSION

Based on the foregoing reasons it is apparent that the death of Thomas Vendemia arose out of and in the course of his employment.

Respectfully Submitted,

BENJAMIN F. ROSSNER,
910 17th Street, N.W.,
Washington 6, D. C.
Attorney for Appellant

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1 Filed Nov. 13, 1953. Harry M. Hull, Clerk.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 5327-53.

JESSIE L. VENDEMLA
Widow of Thomas Vendemia
407 - 60th Avenue, Capitol Heights, Maryland
Plaintiff,

v.

ANTHONY J. CRISTALDI
(Serve at 4919 Nebraska Ave., N.W.
Washington, D. C.)

and

PHILIP P. CRISTALDI
(Serve at 3005 Military Road, N.W., Washington, D. C.)

and

JOSEPH P. CRISTALDI
(Serve at 3048 Dogwood St., N.W.
Washington, D. C.)

PARTNERS, T/A CRISS BROS. AND COMPANY
3424 New River Road, Bladensburg, Maryland
EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY
OF WISCONSIN, INC.

A Corporation
351 Shoreham Building, Washington, D. C.

P. J. DONOVAN
Deputy Commissioner
District of Columbia Compensation District
Bureau of Employees' Compensation, Washington, D. C.
Defendants.

COMPLAINT TO SET ASIDE ORDER OF COMPENSATION COMMISSION

Plaintiff, complaining of the defendants, alleges as follows:

1. Jurisdiction is vested in this Court by Section 21(b) of the Longshoremen's and Harbor Workers' Compensation Act made applicable to the District of Columbia by an act of Congress approved May 17, 1928.

2. Plaintiff brings this Complaint as surviving wife of Thomas Vendemia, deceased employee of the defendants Anthony J. Cristaldi, Philip P. Cristaldi and Joseph Cristaldi, Partners, t/a Criss Bros. and Company.

3. Anthony J. Cristaldi, Philip P. Cristaldi and Joseph Cristaldi, Partners, t/a Criss Bros. and Company are sued as the employers of the deceased Thomas Vendemia.

4. Employers Mutual Liability Insurance Company of Wisconsin, is a corporation doing business in the District of Columbia and is sued herein as the compensation insurance carrier for the defendants, Anthony J. Cristaldi, Philip P. Cristaldi and Joseph Cristaldi, Partners, t/a Criss Bros. and Company, employer of the plaintiff's deceased husband.

5. P. J. Donovan is sued as Deputy Commissioner, District of Columbia Compensation District.

6. On May 27, 1952, Thomas Vendemia was an employee of the defendants Anthony J. Cristaldi, Philip P. Cristaldi and Joseph Cristaldi, Partners, t/a Criss Bros. and Company. That the decedent on said day performed services for the employer as an ornamental iron worker at Mary Washington College, Fredericksburg, Virginia.

7. That Thomas Vendemia had been engaged as an ornamental iron worker for approximately twenty-five years and that he had been employed with defendants, Criss Bros. and Company in this type of work since June, 1946.

8. That on May 27, 1952 from 7:30 a.m, to 11:15 a.m., Thomas Vendemia, the employee, was working with a fellow employee placing templates for railings on concrete stairs. That the employer's truck was parked about 35 feet from the building in which the stairs were located.

3 9. That the stairs located in the building upon which the decedent and fellow employee were placing templates and iron rails consisted of the following:

6 steps from building basement to the first landing, 14 steps from the first landing to the first floor, 10 steps from the first floor to the second landing and 10 steps from the second landing to the second floor.

10. That the making of the templates consisted of taking pieces of $\frac{1}{2}$ inch by $1\frac{1}{2}$ inch flat iron approximately 16 to 17 feet in length, each piece weighing 50 to 75 pounds and required that same be laid on the stairs and marked to form patterns to insure true fabrication. The templates did not fit properly and the fitting adjustments required the deceased and fellow employee to carry the templates up and down the steps numerous times.

11. That in the making of the templates it was necessary to heat the iron with acetylene torch and bend it with an anvil and hammer. In the event that a template carried up the steps did not fit, it was necessary that it be marked and carried back to the truck, heated with the acetylene torch, and be bent with a hammer and then be carried back up the steps. Such process was repeated until a true measurement was obtained.

12. That from 7:30 a.m., to 11:15 a.m., on May 27, 1952, Thomas Vendemia, the decedent, with a fellow employee carried templates, each weighing 50 to 75 pounds, up and down 40 steps, thirty times or more and, additionally Thomas Vendemia, the decedent, with a fellow employee, carried templates, each weighing 50 to 75 pounds up and down 20 steps, thirty or forty times. The unusual num-

ber of trips up and down the steps were required by the reason of the templates not having been properly made at the shop.

4 13. The decedent in addition to carrying weight going up and down the steps as aforerelated, moved heavy iron rails on the landing, runway and balcony and unloaded 70 to 80 pounds of lead to be used with electric welder.

14. The decedent, from 1:15 a.m., to 12:00 noon, on May 27, 1952, with a fellow employee engaged in attempting to fit assembled rails into sleeves; that they carried two rails, weighing about 150 pounds each, from the basement to the first floor (20 steps). That considerable difficulty was had in placing the two rails in the sleeves and it was necessary to try same numerous times before railings would fit into the sleeves.

15. That from 12:00 noon to 12:30 p.m., the deceased employee stopped work to eat his lunch and that during his lunch period he complained to his fellow employee of pain in his chest and went to secure a drink of water and that he still thereafter did not feel well.

16. That at about 12:30 p.m., the deceased employee returned to work with his fellow employee and set up rails on horses, plumbed a rail and wedged it. That during this time he obtained two drinks of water in the building and complained to his fellow employee of not feeling well and at about 1:15 p.m., after a conversation with his fellow employee he went to the employer's truck and lay down where he found dead a short time later by his fellow employee. That he died at 1:30 p.m., on May 27, 1952 of coronary thrombosis.

17. That subsequent to the death of said deceased employee, the plaintiff herein filed a claim for death benefits under the provisions of the Longshoremen's and Harbor Workers' Compensation Act with the Deputy Commissioner,

District of Columbia Compensation District, Bureau of Employees' Compensation. That said claim for death benefits was filed on her own behalf for death benefits under said Act.

5 18. That thereafter on June 4, 1953 a hearing was commenced in this matter before P. J. Donovan, Deputy Commissioner, District of Columbia Compensation District, Bureau of Employees' Compensation. On June 17, 1953, without the presence of the Deputy Commissioner in Fredericksburg, Virginia, the deposition of Dr. John Eugene Cole was taken and that a final hearing was had before P. J. Donovan, Deputy Commissioner on September 9, 1953, who on the 5th day of November, 1953 made and filed his findings of facts and order rejecting plaintiff's claim. That a copy of said findings of facts is filed herein marked Plaintiff's Exhibit "A" and it is requested that it be taken and read as part of this Complaint.

19. Plaintiff alleges that during the time of employment of her deceased husband by the defendants Anthony J. Cristaldi, Philip P. Cristaldi and Joseph P. Cristaldi, Partners, t/a Criss Bros. and Company, said employers had, pursuant to the provision of the Act of Congress secured a policy of Workmen's Compensation Insurance covering its employees, including plaintiff's deceased husband herein, and that such policy of compensation insurance was in full force and effect at the time of the death of plaintiff's husband hereinbefore set forth.

20. Plaintiff is advised that the defendant P. J. Donovan erred in his findings as follows:

(1) That the Deputy Commissioner's findings are unsupported by substantial evidence on the record considered as a whole.

(a) No consideration or finding was made as to whether or not the disease suffered by the deceased employee was or was not aggravated by his employment which did or did not result in the employee's death.

(2) That the findings of fact herein does not truly disclose the facts, causes, circumstances and medical factors surrounding the death of Thomas Vendemia and all such evidence has been pointedly omitted and apparently not considered by the Commission.

6 (3) That evidence of carrying weight up and down steps as well as other work activities of the decedent before and after lunch is not in the findings of facts and was apparently not considered.

(4) That the decedent met his death from coronary thrombosis while engaged in the work of the employer and the Commission has not afforded the surviving wife the statutory presumption that her claim comes within the provisions of the Workmen's Compensation Act.

(5) There was no substantial evidence submitted to the Commission to show that the death of the decedent was not directly traceable to aggravation of a pre-existing disease in the course of the decedent's employment.

(6) The Deputy Commissioner's findings of facts are not supported by substantial evidence on the record considered as a whole.

Wherefore, plaintiff requests this Court as follows:

1. That process be issued and served upon the Solicitor of the U. S. Department of Labor and the U. S. Attorney for the District of Columbia as required by the statute in such case.

2. That the entire proceedings before said Deputy Commissioner be reviewed by this Court as to the conclusion of law therein contained, that a proper decree may be granted as plaintiff in law is entitled to.

3. That an injunction issue out of this Court requiring defendant P. J. Donovan, Deputy Commissioner, District of Columbia Compensation District, Bureau of Employee's Compensation, to set aside said order of November 5, 1953

7 and proceed to award compensation to the plaintiff in pursuance of the terms of the Act.

4. That the plaintiff have such other and further relief as to this Court may seem fit and proper.

JESSIE L. VENDEMLA.

DISTRICT OF COLUMBIA, ss.:

Jessie L. Vendemia, being first duly sworn on oath deposes and says that she has read the foregoing Complaint by her subscribed and knows the contents thereof and believes everything therein to be the truth except matters alleged upon information and belief, which she believes to be true.

JESSIE L. VENDEMLA.

Subscribed and sworn to before me this 17th day of November, 1953.

RUTH ROBERTS, Notary Public, D. C. My commission Expires May 31, 1957.

(SEAL)

BENJAMIN F. ROSSNER, Bar Building, 910 Seventeenth St., N.W., Washington 6, D. C., District 7-6700, Attorney for Plaintiff.

8 Filed Nov. 18, 1953. Harry M. Hull, Clerk

PLAINTIFF'S EXHIBIT "A"

UNITED STATES DEPARTMENT OF LABOR
BUREAU OF EMPLOYEES' COMPENSATION
DISTRICT OF COLUMBIA
COMPENSATION DISTRICT

In the matter of the claim for compensation under the District of Columbia Workmen's Compensation Act

(Thomas Vendemia, deceased employee) Jessie L. Vendemia, surviving wife, Claimant,

vs.

Anthony J. Cristaldi, Philip P. Cristaldi and Joseph P. Cristaldi, Partners, t/a Criss Bros. and Company, Employer,

Employers Mutual Liability Insurance Company of Wisconsin, Insurance Carrier.

COMPENSATION ORDER

Rejection of Claim for Death Benefits

Case No. 13298-15 Fatal

Such investigation in respect to the above-entitled claim having been made as is considered necessary, and hearings having been duly held in conformity with law, the Deputy Commissioner makes the following

FINDINGS OF FACT

That on May 27, 1952, Thomas Vendemia, hereinafter referred to as "employee," was in the employ of the employer above named, whose address is 1360 Okie Street, Northeast, Washington, District of Columbia; that the employer was subject to the provisions of an Act of Congress approved May 17, 1928, entitled "An Act to provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia, and for other purposes"; that the liability of the employer for compensation under the said Act was insured by the Employers Mutual Liability Insurance Company of Wisconsin; that on the said day the employee herein performed services for the employer as an ornamental iron-worker at Mary Washington College, Fredericksburg, Virginia; that the employee had been engaged as an ornamental iron-worker for approximately 25 years, and had

9 been employed with Criss Bros. and Company in this type of work since June 1946; that prior to May 27, 1952, the only known illness suffered by the employee was a rectal abscess in December 1950, and he had completely recovered from this condition as of December 8, 1950; that on May 27, 1952, from 7:30 a.m. to 11:15 a.m. the employee, accompanied by a fellow employee, was engaged in making templates for railings on concrete stairs; that the employer's truck was parked about 35 feet from the building in which the stairs were located; that there were 6 steps from the building basement to the first landing, 14 steps from the first landing to the first floor, 10 steps from the first floor to the second landing, and 10 steps from the second landing to the second floor; that the making of the templates consisted of taking pieces of $\frac{1}{2}$ inch by $1\frac{1}{2}$ inch flat iron approximately 16 to 17 feet in length, each piece weighing 50 to 75 pounds, laying them on the stairs and marking them to form patterns to insure true fabrication; that in making the templates it was necessary to heat the iron with an acetylene torch and bend it with anvil and hammer; that after the flat iron was marked it was carried to the truck, heated with the acetylene torch, and bent with a hammer, then carried from the truck to the stairs; that this process was repeated until a true measurement was obtained; that from 11:15 a.m. to 12 noon on May 27, 1952, the employee and his fellow-worker were engaged in attempting to fit assembled rails into sleeves; that they carried 2 rails, weighing about 75 pounds each, from the basement to the first floor; that the estimated weather temperatures at Fredericksburg on May 27, 1952, were 69 degrees Fahrenheit at 8:30 a.m., 74 degrees at 10:30 a.m., 77 to 78 degrees at 12:30 noon, and 79 degrees at 2:30 p.m.; that the estimated humidity at noon was 34 to 40 per cent; that from 12 noon to 12:30 the employee stopped work to eat his lunch; that shortly after eating his lunch he complained to his fellow-employee of pain in the chest, and went to secure a drink of water; that upon

the employee's return he did not look well and he went and got another drink of water; that he then left the building and went to the truck and lay down on the seat in the cab of the truck, where he was found a short time later by his fellow-employee that he died at 1:30 p.m. of coronary thrombosis; that Jessie L. Vendemia, who was born on June 29, 1905, and married to the decedent on September 20, 1924, is the surviving wife of the employee and on July 8, 1952, she filed claim against the employer for death benefits under the District of Columbia Workmen's Compensation Act, alleging that the death of the employee arose out of and in the course of the employment; that the death of the employee was not caused by an injury arising out of and in the course of the employment.

Upon the foregoing findings of fact, it is ordered by the Deputy Commissioner that the claim for death benefits filed by Jessie L. Vendemia be and it hereby is **REJECTED** for the following reason:

That the death of Thomas Vendemia on May 27, 1952 did not result from injury arising out of and in the course of his employment.

Given under my hand at Washington, D. C. this fifth day of November, 1953. (s) P. J. Donovan, Deputy Commissioner District of Columbia Compensation District.

PROOF OF SERVICE

I hereby certify that a copy of the foregoing compensation order was sent by registered mail to the claimant, the employer, the insurance carrier and the attorney for the claimant, and the attorney for the respondents at the last known address of each as follows:

Name, Address:

Mrs. Jessie L. Vendemia, 407-60th Avenue. Capitol Heights, Maryland.

Anthony J. Cristaldi, Philip P. Cristaldi and Joseph P. Cristaldi, Partners t/a Criss Bros. and Company, 1360 Okie Street, N.E., Washington, D. C.

Employers Mutual Liability Insurance Company of Wisconsin, 351 Shoreham Building, Washington 5, D. C.

Benjamin F. Rossner, Esq., Barr Building, 910-17th Street, N.W., Washington 6, D. C.

George A. Chadwick, Jr., Esq., Southern Building, Washington 5, D. C.

(s) P. J. Donovan

Mailed November 5, 1953

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20

PROCEEDINGS

DR. WILLIAM SUIT RITCHIE

* * * * *

23 Q. What do your records show his condition to be when you first saw him? A. He came in on December 2, because he had an abcess around a margin of the anus, and he was examined and we found a rectal abscess which he told me he had at that time. The blood pressure was 140/80 and physical examination of his chest was negative. There was no evidence of any cardiovascular disease at that time.

* * * * *

26 Q. You did state that his general health was good, didn't you? A. As far as I know, yes.

* * * * *

Q. Does a coronary embolism usually give any advance warning? A. It may or it may not.

* * * * *

27 Q. Can you describe in lay terms the condition which doctors refer to as coronary embolism? A. Yes, that is very simple. The heart is one big muscle, and all muscle tissues, just like the muscle tissues in your leg, have arteries supplying the heart. One goes down the front part and one goes down the back, anterior and posterior, coronary arteries. If either one of those branches becomes blocked off or completely blocked off, there is a certain amount of damage and it may vary from just a mild attack of anginal pain to sudden death where both passages are blocked off completely.

Q. What causes that condition? A. One cause is spasm of the artery from certain conditions. The most common cause is a clot forming from a slowing of the circulation.

* * * * *

28 A. Without question there are many things that we
29 don't know exactly. There is a slowing of the
circulation: it is a degenerative thing. It can come from high blood pressure where the arteries are a little hardened to slow the flow of the blood like in a conduit or a passage that is old and has been in use for a long time.

* * * * *

34 Q. Is the presence of an embolism generally thought to be due to natural causes or to external factors? A. No, probably 50-50: trauma and injury. People die, for example, when they get a broken leg, maybe a piece of fat cell from the bone marrow will get loose and sometimes produce death. That is your fatty embolism.

Q. In the absence of a trauma, what is thought to be the cause of an embolism? A. Just what I mentioned before: usually a slowing down of the circulation for one reason or another.

* * * * *

35

REDIRECT EXAMINATION

By Mr. Rossner:

Q. Doctor, in examining that death certificate, you will notice that it says exhaustion. The exhaustion that is stated there, what is your opinion of the exhaustion being stated there? A. I really—

Mr. Chadwick: I object.

Mr. Rossner: This man is a medical man. I am perfectly entitled to his opinion.

Go ahead.

The Deputy Commissioner: You may answer the question, doctor.

A. It seems to me if a man died in a few minutes and he wasn't a patient of mine, I wouldn't know how to determine whether he had any exhaustion or not.

* * * * *

By Mr. Rossner:

Q. Going into this question of coronary thrombosis that we have here, would a man who has been working in the hot sun all day—let's say a man who has been working in the heat for a complete morning with no shade being
36 afforded to him and temperature being, say, in the 80's, and is doing hard manual labor such as carrying heavy pipe rails—would his work plus the weather tend to activate any condition that might exist, if he had a coronary thrombosis condition?

* * * * *

37 A. All I would say is it could.

* * * * *

38 Q. But in your opinion would you say that walking up and down a staircase, consisting of maybe 50 or 60 steps, say, in a period of three or four hours about,

say, forty or fifty times, would that affect a man's heart if he had an existing heart condition?

A. Again I have to answer it the same way. It could.

41 MRS. JESSIE L. VENDEMIA

DIRECT EXAMINATION

By Mr. Rossner:

42 Q. You married Thomas Vendemia on September 20, 1924, is that correct? A. Yes, sir.

43 Q. For how many years were you married to Thomas Vendemia before he died? A. Not quite 28 years.

Q. Has your husband ever been sick? A. Not to my knowledge, any serious sickness, only have a cold like all of us do now and then.

Q. He was last treated by Dr. who? A. Dr. Richey.

Q. Who has previously testified? A. Yes.

Q. What was the occupation of your husband? A. Iron worker.

Q. How long had he been an iron worker? A. A good many years, since he was a young boy, when he started.

45 Q. Did there come a time when you started observing yourself that he was coming home especially tired? A. Yes, I did.

Q. How long ago was that, as far back as you can recall?
 A. I would say about six or seven months back before the time when he passed away, he would come in in the evenings and have his supper and I would think he was going to look at television or something, but the first thing I would know he would be off sleeping. Then he would get up and go right off to bed, and that is practically the pattern he followed for six or seven months; just worn out.

* * * * *

47 Q. Had you noticed any appreciable slowing down on his part within the last few months? A. To a certain extent, like I say, I noticed, you know, he looked like he had this tired feeling.

The Deputy Commissioner: What did you say he looked like?

48 The Witness: Tired feeling when he would come in from work.

* * * * *

Q. Did he look particularly exhausted when he came home within the last few weeks before he met his death?
 A. Yes, I would say so.

* * * * *

50 Q. Had he ever complained to you that the work was too strenuous, that he ought to get lighter work?
 A. Not in that way, but sometimes he would explain his day's work to me, and say, Well, I had this to do, it was hard, or he felt tired, or something like that, when he would come in of an evening.

* * * * *

Q. Did he ever complain to you that the work was too strenuous for him? A. No, he never complained about his work. Whatever it was, he went ahead and did it.

Q. He wasn't looking for another job, lighter work, or anything of that sort? A. No.

* * * * *

52 IDA MARY FRANCES TYLER

* * * * *

53 Q. What had you noticed his physical condition to be over the last few years prior to his death?
A. I noticed no change in it. He was getting a little older.

* * * * *

54 Q. Within the last six months, would you say he appeared more exhausted than previously? A. I didn't see any too much difference. It could have been the kind of work that he was doing then. I know my husband would come home tired because they would have two and three hours drive in that truck, and I guess that is kind of exhausting.

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56 FRANK THOMAS VENDEMIA

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DIRECT EXAMINATION

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Q. What was your father's physical condition prior to his meeting his death? A. I thought he was in perfect health.

* * * * *

57 Q. During the time that you lived with your father and mother, did you have occasion to observe your

father's actions? A. Yes, I did. In the last few months prior to his death, I noticed a big change in him. He would come home kind of tired and would eat his supper, and if he didn't go to council meeting that evening, he would be home resting right after supper, taking naps, and probably sleep until time to go to bed.

* * * * *

59 Q. As a matter of fact, Frank hadn't he had a previous heart attack? A. No.

Q. You don't know of any previous heart trouble? A. No. I thought he was in perfect health.

* * * * *

60 ANTHONY JOSEPH CRISTALDI

* * * * *

DIRECT EXAMINATION

By Mr. Rossner:

Q. How long had—what business are you engaged in, sir? A. Miscellaneous and ornamental iron works.

Q. How many employees do you have at your shop? A. About 12 or 14, something like that. It varies.

Q. Was Thomas Vendamia an employee of your company? A. Yes.

Q. How long have he been an employee of your company prior to his death? A. Since 1946. June, I think it was, of 1946.

Q. From June, 1946 to the time he died, did he ever take any sick leave? A. No, worked every day.

Q. What type of work did Mr. Vendemia do for your company? A. He would have erected all the miscellaneous steel we sent out. He was a steel erector on the outside.

* * * * *

62 Q. What was he doing out there that day? A. He was making templates for railings on the concrete stairs.

* * * * *

63 Q. Was that an outside job or an inside job? A. Do you mean what he was working on that morning?

Q. Yes, what he was working on that morning. A. The concrete stairs were inside.

Q. Is that what they were working on at that time? A. Yes, at that time.

* * * * *

Q. How much does a template weigh? A. As a rule we make them out of either wood—sometimes we take measurements with wood. That particular template they were working on didn't weight over 50 pounds.

* * * * *

70 Q. Now, referring to these blue prints and the staircases that they were working on, am I correct in assuming that the iron work that they were engaged in was placing the rails on this staircase, is that correct? A. That is correct; making the templates for the rails.

Q. From the very bottom point of the job to the very top part of the job, can you tell from looking at the blue print (1) the height of the staircase; and (2) the number of steps involved here?

71 The Deputy Commissioner: In answering this question, let the record show that the witness is looking at Sheet 9 of 12 in this same section of the blue prints.

* * * * *

72 The Deputy Commissioner: Let the record now show that the witness testifies as follows.

The Witness: There are six steps from the basement to the first landing; 14 steps from the landing to the first floor; 10 steps from the first floor to the next landing; and 10 steps from that landing to the second floor.

* * * * *

75 Q. But you do know, based on what you have showed us of the blueprints, that in all probability he was working going up and down steps? In other words, his work was directly in contact with steps. A. He
76 walked up and down these steps (indicating), yes.

* * * * *

CROSS EXAMINATION

By Mr. Chadwick:

Q. You stated that those templates were an inch and a half by a half an inch by one eighth channel iron? A. Yes. You don't mind if I check back now and make sure I said the correct thing, do you? I notice it is channel at the top, but I haven't as yet—no, it is one and a half by one half, flat.

Q. That means that that top section of that piece of iron would be an inch and a half one dimension and a half an inch the other? A. Right.

77 Q. Then they were sufficient length to fit in there?
A. Yes.

The Deputy Commissioner: What was the average length, Mr. Cristaldi?

The Witness: About 16 or 17 feet.

The Deputy Commissioner: All right.

By Mr. Chadwick:

Q. Can you give us an approximation of what one of those pieces of iron would weigh? A. I would say between 50 pounds and 75 pounds, somewhere around there.

Q. What was the procedure that they would take them

up and lay them down on the stairs and get them in position? A. Yes, and put marks on them.

Q. Then did they have anything else to do? A. They had to form these corners where they went around these bends.

Q. How did they do that? A. With a hammer and anvil.

Q. Where did they have that hammer and anvil? A. Right there in the job with them.

Q. Did they have to heat them? A. Yes, they did.

Q. Where did they heat them? A. With a torch.

78 Q. What kind of torch would that be? A. An acetylene and oxygen tank.

Q. Do they have those right at the place where they are working? A. Yes.

Q. And they beat them to the proper shape and tried them again? A. That is right.

* * * * *

The Deputy Commissioner: What would you say the average number of times would be that they would have to go up and down stairs?

79 The Witness: That is hard to answer. I really couldn't say that. I don't believe they went up and down those stairs more than 10 times in a day taking templates.

The Deputy Commissioner: In the 10 times during a full day, are you speaking of an 8-hour day, are you not?

* * * * *

80 Q. What other work had been done around the place? A. The balcony rails, and they were all up.

The Deputy Commissioner: Referring now to Sheet 3 of 12.

81 Q. What did one of those weigh? A. 400 pounds, took 4 men to handle it.

Q. That is a long rail, isn't it? A. Not too long. Some of these were awfully small. Here are some that were only

a foot long. Wait a minute—two feet long. They were short rails, and there are some that were five feet and six feet long.

Q. How long were the rails that weighed 400 pounds? A. 8 feet 2 inches, you see there are some there (indicating).

The Deputy Commissioner: The witness is now referring to Sheet 4 of 12.

The Witness: They were 16 feet. These were the heavy ones.

The Deputy Commissioner: Do you mean the 16-foot rails weighed 400 pounds?

The Witness: About 400 pounds.

The Deputy Commissioner: How much would the one-foot and two-foot rails weigh?

The Witness: I would say about 50, 35 to 50, somewhere in there.

By Mr. Chadwick:

Q. Did Mr. Vendemia participate in erecting this 16-foot rail? A. Yes.

Q. That had been done at the time of his death?

82 A. Yes, we had other men with him at that time.

Q. But he was part of the force working on those 16-foot rails? A. That is right.

Q. Let me ask you this: Compared to putting up those steel stairs and putting up those 16-foot rails which he had participated in, how would you class making these templates with respect to whether it is heavier or lighter than that work? A. It was a lot lighter, but it take a lot more brains to make the tempates. That is why we had him out there.

* * * * *

85 Q. Do you have any knowledge as to exactly where they were situated, as far as location, where they operated from to do the work they had assigned to them?

Were they outside or inside working? A. They were inside. The truck naturally was outside, and they had to go out to it to get tools.

Q. But you don't know actually what they are working on, do you? What I mean would they be working outside or inside because the work would get spread around, 86 wouldn't it? A. No.

* * * * *

87 Q. Where is Mary Washington College, the site of this work with regard to whether or not it is on a hill? A. It is on a high hill; after you cross that river going to Richmond you go up a steep hill and at the top of that hill, that is where Mary Washington College is.

Q. I will ask you where this building was, was it surrounded by lawns and trees? A. Surrounded by lawns and trees. It is in the suburbs of Fredericksburg.

* * * * *

88 Q. The weight of the railings, is that sufficient to make moving those rails around pretty strenuous work? If you are shaking your head no— A. I am not shaking my head, yes. If two men couldn't handle the work, we would always have two or three men to help them take it because at the time I had four men down there helping.

* * * * *

FURTHER RECROSS EXAMINATION

* * * * *

Q. Just one thing further. Who was in charge of that iron work down there? A. Tommy.

Q. By that you mean Mr. Vendemia?

89 Mr. Rossner: The only two people working down there were Tyler and Vendemia, when he died, is that correct?

The witness: Yes, sir.

90 MELVIN ARTHUR TYLER

DIRECT EXAMINATION

By Mr. Rossner:

91 Q. How long have you known Thomas Vendemia?
A. I would say 15 or 20 years.

The Deputy Commissioner: I think we might mention in the record here: Are you the son-in-law of Mr. Vendemia, Mr. Tyler?

The Witness: Yes, sir.

92 Q. How long have you worked for Criss Brothers?
A. A little over two and a half years.

Q. During this time did you work with Thomas Vendemia? A. Yes, sir; most of the time.

Q. What have you from your own personal observations observed as to the general health of Thomas Vendemia prior to the day he met his death which was May 27, 1952?

A. He had never been sick as I know of. I have never seen him sick myself except a cold or something, but he has never been sick.

93 Q. How long a stretch did you stay down there before May 27? A. I would say two weeks.

Q. Were you working there steadily for two weeks?

The Deputy Commissioner: Are you speaking now of May 27, 1952?

Mr. Rossner: In relation to May 27, I presume his answer was that he had been down there steadily for two
94 weeks prior to May 27.

By Mr. Rossner:

Q. Is that correct? A. Yes, sir.

The Deputy Commissioner: But you are speaking of 1952, the date of the death?

Mr. Rossner: Yes, the date of death.

* * * * *

101 Q. On May 27, would you tell us what the weather was? A. It was hot that morning. About 10 or 10:30 it was getting kind of hot where we were working. The sun was shining right on us.

Q. Was it cloudy at any time during that day? A. No.

Q. You and Mr. Vendemia were working exposed to the sun, is that correct? A. That is right.

Q. Was the sunny side of the building you were working on? A. Yes, sir; at that time of the morning it is.

102 Q. As to the ground, was there any grass on it? A. No.

Q. When you arrived on the job that morning, what did you and Mr. Vendemia start to do? A. As soon as we got there, we parked the truck, started taking our tools out and put the torch off the truck and were going to fix templates. The templates were there. We took them in and tried them on the steps, tried every one of them to see how they would fit.

Q. Just tell me exactly what you did now. Let us start right from the beginning of that day. You got out to the

job and you say you fixed the templates you had to fix. Who did you fix the templates with? A. I fixed them with my father-in-law.

Q. How much does a template weigh? A. I would say 50 to 75 pounds.

Q. Where were the templates kept? A. They were there. Another truck had brought them down. Another crew had been there and made a template for one stair, and we were going to make the other.

Q. Where were the templates—outside or inside? A. They were inside.

Q. What did you and Mr. Vendemia have to do with the templates? What did you do with them? A. Carried them up, put them on the steps.

103 Q. Upstairs or downstairs? A. On the first floor.

Q. Where were the templates? Were they on the sidewalk? A. That is right.

Q. Where did you take the templates? Just take the beginning of the morning, what did you do with your father-in-law, Mr. Vendemia? A. First, you couldn't use one template. You try it. You have to do that every time because when you bend it and the other template comes down it has to go together and so you have to match them one from the strips above and the one on the last run of it; when you make it bend, the bend has to be the same as the one coming down, so when they make the stairs it would fit.

Q. Would that require you to go up and down the stairs? A. Yes, sir.

Q. How many times would you say Mr. Vendemia went up and down the stairs in the course of that morning? A. That morning we worked on the templates approximately four hours. I would say 70 or 80 times up and down the stairs.

The Deputy Commissioner: How many times?

The Witness: 70 or 80.

104 The Deputy Commissioner: In a half day?

The Witness: Up and down the steps.

By Mr. Rossner:

Q. Why was it necessary that he make so many trips?

A. You see, on account of the pitch and bend on your templates, you have to try them on the steps to see if they are going to fit; and if it doesn't fit the other section coming down, you take it out and put on the vise, heat it, hit it and bend it, and try it again.

Otherwise, there was precast nosing of the treads on the steps and you couldn't do any heating there because it would break off. It would break the nosers off the steps, so we had to take them out to the truck and try it.

* * * * *

108 Q. How many times did Mr. Vendemia—to go back over the same question that has been asked previously—how many times did you, rather, say Mr. Vendemia, go up and down these steps with a template in his hand?

The Deputy Commissioner: You are speaking now of the one particular day, are you not?

Mr. Rossner: On May 27 between the hours of 7:30 until the time he met his death, about 1 p.m. that day.

A. He went about 60 or 80 times, just as many times as I, because he couldn't carry it by himself and we had to swing it over like I say to get it in there.

The Deputy Commissioner: You made those 60 to 80 trips from the basement all the way to the top.

The Witness: No.

The Deputy Commissioner: Where did you make them?

The Witness: From here to the first landing, and when we got finished with that, we would go on up here (indicating).

The Deputy Commissioner: From the basement to
109 the first floor it is 26, is that right?

Mr. Rossner: It is 26 to the floor and then 10 steps to the first floor.

The Deputy Commissioner: Mr. Rossner, this witness is testifying that on May 27 he and the decedent were work-

ing between the basement and the first floor stairs so that he was not traveling all 40 steps on all those trips he made, was he?

Mr. Rossner: I will break the question up into two parts: One was how many trips did he make from here to here (indicating); and the next question was how many trips did he make from up here to here (indicating).

The Deputy Commissioner: You haven't asked that yet.

Mr. Rossner: No, I was going to get to that and we got back to something else.

By Mr. Rossner:

Q. Referring back again to May 27, 1952, can the number of trips that Mr. Vendemia took on that day be broken into two parts, that which he took up to the first floor, and that which he took up to the second floor? How many, what number of trips do you think Mr. Vendemia made from the basement up to the first floor, up and down? A. About 30 or 40.

Q. How many trips did he make from the basement all the way to the top or the second floor? A. About 110 the same, I guess.

Q. And at all times was he carrying heavy objects with him?

* * * * *

Q. After you were down on the job a short time did you take any of your clothes off? A. Yes, I took my sweat shirt off and rolled my sleeves up on my shirt, and he did the same thing, took his sweater off and rolled his sleeves up.

* * * * *

Q. In addition to these templates was there anything else you all did down there on that job? A. Yes, we had some rails—it was on the landing on the first floor, on the runway, on the balcony, which we would fit these 111 rails in between the columns.

Q. When did you start to do that? A. Right after we finished the templates.

Q. What time did you get through working with the templates approximately? A. Maybe 45 minutes before 12.

Q. Then what did you start to do at that time? A. He said, "We will start on the rails on the porch here." I said, "All right," so I get up on the truck and I throw the welding leads out to him.

Q. What is a welding lead? A. It is for an electric welder. It is a piece of cable, copper wiring, to weld with.

Q. Is it heavy? A. Pulling it along, if you got it all out and pulled it, it is heavy. We didn't have it all out. Probably 50 or 60 feet of that. I let it out and he pulled it out on the steps and laid it out where we were going to work. Then we took the torch and got the torch all out, got the lead, got about a 70 or 80 pound piece of lead to use.

* * * * *

112 Q. What time was that? A. That was about a quarter after eleven.

Q. Then what you and Mr. Vendemia do as far as the rails are concerned? A. We started checking the rails to see which one was going in between the columns, to see which would be the closest. We had to cut so much and we had some to add and some we had to cut off. We started checking them.

* * * * *

113 Q. When you got these railings out, did you have occasion to take them anywhere, to move them? A. Yes.

Q. How did you move them? A. Picked them up.

Q. Who picked them up? A. My father-in-law and myself.

Q. Where did you take them? A. Tried to fit them in between the columns.

Q. Did you move them anywhere? A. Yes, we did. Some of them were 20 feet or 30 feet away from the place where they would fit closest.

Q. Did you have to go up the staircase to fit them in anything? A. No, we didn't have to go on the stairs. It was lying along the walkway. Two of them were down on the ground floor. We had to carry those up.

Q. Where did you carry them to? A. Up to the first floor.

114 Q. Then you had to carry these stair rails from what point to what point? From the basement?

Mr. Chadwick: I don't think the witness has testified that any stairs are involved. I don't remember anything.

The Deputy Commissioner: Did you carry them up 20 steps or less or more?

The Witness: It was a little more than that.

The Deputy Commissioner: Where did you carry them—from the basement?

The Witness: Yes.

The Deputy Commissioner: Up to where?

The Witness: From where we were working, we were going up here and coming down the stairs in through here and out on the walkway (indicating).

* * * * *

115 Q. How many trips did you and Mr. Vendemia make carrying iron rails up? A. Just carried those two up, and the rest of them were laying along that way up there.

Q. How much did that particular iron rail, each of these iron rails weigh? A. The ones we were working on probably weighed 150 pounds or more, but they had some
116 smaller ones that fitted on the ends, and we got those in.

Q. You say you did this about 11:30 or a quarter of 12, is that correct? A. That is right.

Q. Were you successful in fitting these iron railings up

there where you moved them to? A. They didn't fit. We had to add or grind and section them, but finally we got them—

Q. You did that on the balcony or wherever it was you moved the rails to, is that correct? A. That is right.

Q. Getting back to these templates that Mr. Vendemia was moving around in the morning, did there come a time when he found it necessary to use the sledge hammer on these templates? A. Yes.

Q. Can you tell me when that time came first that day? A. A lot of times when you have a curve on your template, it is bent a little bit too much or not enough, and you have to heat it with the torch and then we would take the sledge hammer and hit it.

Q. Who would heat it with the torch? A. I was heating, he was hitting.

Q. How many times did he use the sledge hammer from the morning when you arrived there until the time
117 he died? A. How many times was the sledge hammer used, approximately? A. He probably hit one piece about 10 or 15 times.

The Deputy Commissioner: What was the weight of that hammer?

The Witness: I think it is a 10-pound hammer.

The Deputy Commissioner: 7 pound, did you say?

The Witness: 10 pounds.

The Deputy Commissioner: All right, Mr. Rossner.

By Mr. Rossner:

Q. Is that the total number of times that he used the sledge hammer? A. No, we hit it three or four times, then we would go back up and try them. If it worked we would bring it down again and heat it some more and take it back and try it.

Q. How many templates did you have trouble with that morning? A. Had to do all of them.

Q. How many was it that you tried to put into place? A. There were four pieces of them.

Q. Did you have trouble with each one of them? A. Yes, that is right.

Q. Did each one of them require the use of sledge hammer? A. That is right.

118 Q. Did each one require the use of a torch? A. We heated every one of them and hit it with the sledge hammer.

Q. Did you have it on the vise? A. Yes, sir, that is right.

Q. You would apply the heat to it? A. Yes, sir.

Q. And he would apply the sledge hammer? A. That is right.

Q. Is the use of the sledge hammer on those templates very strenuous? A. He didn't have to hit it too hard because if you hit it too hard you would just knock it out of pitch again; but you have to hit it just right and try to hit it once or twice and take a try, probably after you bring it in and take it back again.

He had to fit these templates right because if you didn't fit them right, and we made the rail, we would have a lot of trouble fitting the railings, so that is why we made it right.

* * * * *

Q. Are these templates very hard to hold? A. They were out in the open. They weren't inside.

119 But going up the stairs it was kind of hard because you had to raise one end of it up to get out of the way of the stairs coming down.

* * * * *

Q. In addition to Mr. Vendemia helping you with the templates, that is, you both getting down the templates up and down the steps and the iron rails that you have
120 spoken about, did he make any other additional trips

up and down the staircase? A. Yes, he made a lot of trips up and down.

Q. In addition to those which you have just told us about?

A. Yes, every one of those stairs had a hole the post goes through, and he cleaned out the holes and laid off the holes all the way up.

* * * * *

Q. For him to do these things that you are telling us about, was it necessary for him to take anything with him in addition? A. Yes, sir, a level, a square, a chisel.

Q. Did he use the chisel? A. Yes, to knock out some stuff around the holes so he could get in front of the hole.

Q. How did he do the chiseling? A. With a hammer and chisel, just knocked the stuff out the front of the hole so he could lay it off square.

* * * * *

122 Q. Was there any other strenuous work that Thomas Vendemia engaged in on that day that you haven't already told us about. A. These rails that were on there that had concrete on them that we had to clean them off.

Q. What time did he do that? A. We put them out by the columns where they were going to go. We put
123 them there, ready to go into the sleeves.

Q. These sleeves were located where? A. In between the columns.

* * * * *

124 Q. How many times do you think you moved that
125 rail around up and down in order to get it to fit into the sleeves that morning? A. One rail would take about 5 times before you would get it fitted right.

* * * * *

Q. How many rails did you try in these various sleeves? Is there an approximate figure, a lump figure, that Mr. Vendemia himself performed that day? A. He probably picked them up about 30 or more times trying it.

* * * * *

127 Q. These rails that you said you moved 30 or 40 times—is that what you said? A. That is right.

Q. What was the approximate weight of the rails? A. 150 pounds.

The Deputy Commissioner: All of them?

The Witness: One section.

The Deputy Commissioner: How many different rails did you move around that morning?

The Witness: We had all one type of rail that morning, all the same.

The Deputy Commissioner: They were all 150 pounds?

The Witness: Yes, all the same, all the same length.

The Deputy Commissioner: Do you think they were all 150 pounds?

The Witness: Yes, sir.

The Deputy Commissioner: How many were there?

The Witness: I think we had 9 of them up on the platform.

* * * * *

128 Q. You have worked with Thomas Vendemia for quite a little while, as you testified. What kind of worker was he? A. He was a hard worker, always on the go, always working. He worked pretty hard.

* * * * *

130 Q. Did he eat the complete lunch with you? A. Yes.

Q. What time did he get ready to go back to work? A. We got finished, I think before we got finished he asked me did I want some of his lunch he had there. I told him no,

I didn't want any. So he went and got a drink of water. And he came back and said, "Well, I guess it is time to go to work." I said all right.

We had then two rails sitting there to heat the lead. I looked at him and he didn't look good. I asked him what was the matter. He said, "I think I got indigestion."

I said, "Why don't you go get a drink of water?"

So he did, and he came back again and he said, "I feel all right."

I started to get the torch to heat up the lead, and then I see him walking on up the walkway a little bit and he comes back down and he didn't look so good to me, and I said, "What is the matter, Tommy?"

He said, "I don't feel so good."

Then he walks arounds a little bit and then comes back and says, "I am all right."

131 I told him, "Why don't you go out in the truck and sit down for a little while?"

He says, "I think I will." So he goes on out in the truck.

Q. What time was that? A. Probably 10 or 15 minutes after 12.

Q. You mean after you returned from lunch? A. Yes.

Q. Go ahead. A. Then I told him I would heat the lead and begin putting the rails in. He goes on up to the truck and I heat the torch and heat up the lead and pour those holes with lead; and when I got finished I went out to the truck to see how he was.

When I went out there, he was dead. I thought he was asleep because he had the door open and one foot sticking out.

* * * * *

132 Q. Then the coroner came—about how long was it before the coroner came? A. It seemed an hour before he got there.

Q. Did he say anything to you—the coroner? A. He

asked me if he was sick or anything. I said, "No, he hasn't been sick, just seemed like himself."

* * * * *

133 Q. What do you think he died from?

Mr. Chadwick: I object. This man is not a medical witness.

Mr. Rossner: Will the Commissioner rule on the question?

The Deputy Commissioner: Yes, we are going to consider medical evidence. I will let the witness answer for what his answer may be worth in the record. What do you think he died from?

The Witness: Well, he has never been sick that I know of to really have something wrong with him, but he worked hard. He could have died from exhaustion.

* * * * *

134 CROSS-EXAMINATION

By Mr. Chadwick:

* * * * *

141 Q. All right, then, from about a quarter after 11 until 12 o'clock you worked on the railings? A. Yes, sir, worked on the railings.

Q. During the time you were working on the templates, did he make any complaint at all about not feeling well? A. No.

Q. From about a quarter after 11 until 12 o'clock you were carrying those railings upstairs, and then you fitted railings, is that right? A. That is right.

Q. During that time did he make any complaint at all about not feeling well? A. No.

* * * * *

144 Q. Was there anything else you had done other than to light the torch from the time you finished

lunch and were ready to go back to lunch until the time he said he wasn't feeling well? A. I hadn't done anything.

Q. Then he went down and got a drink of water at that time? A. That is right.

Q. And the man came back and said he was feeling better, is that right? A. The first time I looked
145 up and asked him what was the matter, he said he had indigestion so he took a little walk and then he came back and said he felt a little better. Then he got a drink of water, and then he came back again, and I asked him how did he feel, and then I started back to work and I looked at him again and I knew something was the matter, and he didn't look so good.

I asked him, "Do you want me to take you to the doctor?"

He said, "No," and then he walked away and then came back and I said why don't you go out to the truck and sit down. He said, "All right, I think I will."

Q. From the time it was time to start work, he hadn't done anything from that time until the time he got sick, had he? A. No, we weren't doing anything while we were eating.

* * * * *

150 REDIRECT EXAMINATION

By Mr. Rossner:

Q. You testified that Mr. Vendemia actually worked after coming back from lunch, is that correct? A. He set the rail up.

151 Q. He set the rail up? A. Yes.

Q. What else did he do? A. He set the rail and wedged it —

* * * * *

Q. What was Mr. Vendemia doing all this time?

* * * * *

A. Right after lunch he picked up and set the rail on the holes.

Q. Who set the rails on the holes? A. Both of us.

Where did you get the rail from? A. It was laying down there for us to work on.

152 Q. How far was it from the holes? A. 5 feet.

Q. And you grabbed one end and he grabbed the other? A. That is right.

Q. And did what? A. Set it on the horses.

Q. What did he do then? A. Checked it and knew how long it was, but we had to grind some of it off.

Q. What happened then? A. We checked it up after we ground it and then picked it up and put it in the hole.

Q. Who picked it up? A. Tommy and myself.

* * * * *

Q. Who wedged it? A. I did.

What was Mr. Vendemia doing? A. He had the plumbing rule on it, getting it for the plumbers on the rail. He wedged it and he checked it for plumbing.

* * * * *

153 Q. Was there any other physical work that was done by Mr. Vendemia after lunch? Just tell me every bit of physical work that was done by him after lunch.

* * * * *

A. After we set the railing, he plumbed it and I braced it, and after that I got the lead and started heating the lead up. He did then get the ladle that the lead would drop into.

* * * * *

158

LEO ALPERT DIRECT EXAMINATION

159 Q. Are you a meteorologist? A. Yes, I am a consulting meteorologist.

* * * * *

163 The Deputy Commissioner: What was the high for
 May 27 at Fredericksburg?

 The Witness: the high was 80 degrees Fahrenheit, and
 the previous day was 85.

 The low during the morning, which probably occurred at
 5 in the morning, would have been 50 degrees, which is a
 35 degree temperature change. The temperature rose
 rapidly during the day to about 78 or 79 degrees at about
 noon. In other words, the skies were clear with strong sun-
 shine all day. In fact, the 27th had all the possible sun-
 shine for that day, and the maximum sunshine of any

164 that month, about 14 and one half hours of sunshine,
 so that the sun was out strong from the moment the
 sun rose until it set.

* * * * * * * * *

168 Q. Will you be good enough to tell us what hourly
 169 temperatures you have arrived at for May 27 at
 Fredericksburg, Virginia? A. Do you want the
 hours?

 Q. State the hours and the temperature and humidity,
 if you have that too. A. We can start at 8:30 in the morn-
 ing. Probable temperature at 8:30 would be 69 degrees;
 at 10:30, 74 degrees; at 12:30, 77 or 78 degrees; at 2:30, 79.
 The humidity at noon probably was moderate, around 34 to
 40 percent.

* * * * * * * * *

177 Q. Doctor, would you class a temperature of 77
 degrees and 34 to 40 percent humidity as being an
 abnormally oppressive day to work as far as Washington
 summer is concerned? A. It would be a moderate day.

* * * * * * * * *

188

DR. PEVERIL MEIGS

Q. What is your occupation? A. I am the chief of the Climatology and Physics Section, Environmental Protection Branch, Research and Developments Division, Office of the Quartermaster General.

198

CROSS EXAMINATION

By Mr. Chadwick:

200 Q. You have formed the opinion that it is most probable that the man didn't die from heart trouble, but rather died from heat exhaustion? A. He might have died from heart trouble brought about by heat exhaustion. It may not have been a long-time, persistent type of heart trouble, but might very well have been the overwork of the heart brought about by overwork and overheating during his day's work.

Q. So you think actually it was the heat exhaustion?

201 The Witness: I feel that heat exhaustion and the physiological changes that go with it very possibly including the strain on the heart could very well have caused his death.

207 Q. And so without any personal knowledge of Mr. Vendemia or of his case except that you have heard an account of it here this morning, isn't it a fair summary of your testimony that a person is more likely to get heat exhaustion if he exercises a lot in hot weather? A. Yes.

210 DR. WILLIAM S. MILLER

* * * * *

DIRECT EXAMINATION

By Mr. Rossner:

211 Q. Are you a specialist in any particular field?

A. I do internal medicine. About 75 percent of all my work is cardiology.

* * * * *

212 Q. From an examination of the death certificate, what in your opinion caused this man's death? A. I would say coronary heart disease.

Q. Did he just get that heart disease? A. No, sir, he couldn't just get that heart disease.

Q. Would you elaborate on that? A. Apparently from the death certificate, one would have to say that he died from coronary heart disease. Coronary heart disease is not any sudden process. It is a progressive thing that goes over a period of time; and if this goes over a period of time, naturally it reaches a certain stage where it causes signs and symptoms.

* * * * *

219 These attacks also come on frequently after a full meal, something which you just brought out.

The theory behind that is that the patient has a coronary insufficiency. He isn't getting enough blood supply to the heart, and by filling up the stomach, the blood would go down to the intestines to help digest the food and takes some blood from the heart; and in that way they can precipitate one of these attacks.

* * * * *

221 The Witness: Coronary embolism, I think, is misplaced on that death certificate. I think he meant

really coronary arteriosclerosis, heart disease. Here is a man 50 year old who apparently had been doing hard work all his life, and my opinion would be that he had coronary arteriosclerosis, heart disease.

* * * * *

The Witness: No, sir. I think what the doctor might have meant was coronary thrombosis rather than coronary embolism. Whether you could find any embolism I don't know, but I think he meant coronary thrombosis.

The Deputy Commissioner: Will you explain for the record what coronary thrombosis is?

The Witness: Yes, sir; coronary thrombosis is a
 222 process that takes place in a coronary artery, which is an artery of the heart itself or leading to the heart and then branching out into the heart muscles. The inner lining of the little artery has deposits that may bring about calcification or lipid, which is a waxy like material and it finally protudes far enough into the lumen, the inner lining membrane that lines the inside of the artery, and a clot forms.

* * * * *

223 Q. You heard the work this man, Thomas Vendemia, did on May 27, 1952, that he had worked all morning and that he had carried certain templates which weighed 75 pounds to 80 pounds with a man by the name of Tyler, that additionally they had moved rails around which necessitated their going up and down the steps. All that has been brought out.

In your opinion would his work activities on that day, could they, have aggravated an existing heart condition that he may have had?

224 Mr. Chadwick: Is he asking did they or could they?

The Deputy Commissioner: Could they.

Mr. Rossner: Could they, an opinion.

A. Certainly they could.

Q. Does exposure to the sun at times affect heart cases, a man who is suffering from a heart condition? A. I would rather not commit myself except informally on something like that because I would rather stick to the heart angle in itself. It would have to be a pretty hot sun and he would have to be pretty exhausted. Under ordinary conditions there are more heart attacks in cold weather than in hot weather.

* * * * *

225 The Deputy Commissioner: Doctor, for your information and assistance in answering those questions, it is my observation from the various testimony received here that this man was doing normal work of an ornamental iron worker.

226 The Witness: He was doing normal hard labor. In other words, he had been used to doing it all the time. Naturally, if he had a pre-existing condition and he had been doing a normal hard labor all the time his muscles and all may have been used to that and he would have been acclimatized or adjusted to that. But still and all, if he was doing other type of work it wouldnt' have aggravated the heart condition though he was used to doing that hard labor and that is still something to enter into the picture.

In other words, some one that does work of a hard laborer, I think a heart condition certainly is going to be aggravated or they are going to show signs and symptoms or have something happen to them sooner than someone who does desk work.

* * * * *

228 Q. My question was that on the 26th, the temperature was 85 degrees, 61 percent relative humidity; on the 27th my record on the temperature shows that they vary from 69 all the way up to 79, and he was doing
229 hard work all that day. That is the day he met his death.

I seek an opinion as to whether or not an existing heart condition could have been aggravated on the 27th by reason of the work he did on the 27th. A. To me, I think that is splitting hairs. I think that the work on the 26th could have killed him on the 27th. It is close enough to anything. The stress and strain that day was close enough to have gradually progressed and precipitated this the next day.

If he had had a gradual progression of an infarct at the starting of the day before, what he was doing the next day might not have been out of the ordinary and still have precipitated trouble.

* * * * *

CROSS EXAMINATION

By Mr. Chadwick:

Q. Doctor, I take it you say it could have. Based on your lack of personal observation of the case, I take it from that that you are not able to state definitely that it did, are you? A. No.

* * * * *

231 Q. Now you have described that this man's death probably occurred by coronary insufficiency or ischemia, isn't that right? A. I think so.

* * * * *

235 Q. Yes. Now, as a matter of fact, doctor, it is not at all uncommon, is it, for a person to have an attack of coronary thrombosis during his sleep? A. Yes.

Q. In that case, of course, the individual is completely at rest, is he not? A. Yes.

Q. And it is possible for an attack of that sort to terminate fatally before he ever awakes, isn't that correct? A. Yes, sir.

236 Q. Doctor, I take it, then, that it is possible for a natural condition to terminate in death due to coro-

nary thrombosis without the intervention of any exertion or other deleterious environment factors, isn't that correct?

A. Yes, sir.

Q. Do you have any assurance that this man's didn't suggest exactly that sort of condition? A. No, sir, I don't have any assurance.

Q. Doctor, isn't it a further fact that on autopsy it is determined that about 7 out of 10 cases of coronary thrombosis are apparently due to natural causes without the intervention of any overexertion factors whatsoever? A. Yes, sir.

Q. Let me ask you this: If this man had worked so hard that it overtaxed his heart the day before his death and caused ischemia or possibly an infarct, wouldn't you have expected him to sustain angina pains during that time? A. That is a good question. Not necessarily so. You could expect it, but not necessarily so. This thing can be very slowly progressive.

Q. Do you think the probabilities are that he would have sustained angina pains? A. I have to say I can't answer that question without postulating too much. Just as an explanatory measure, when we exercise these people in the office and we bring on these symptoms, we
237 wait and everything should clear up, but we still make them go home and make them rest and take it easy because we are afraid of how much damage we may have produced there.

* * * * *

238 A. First of all, coronary thrombosis has never been proved to be due to work.

* * * * *

240 A. I will say this: if a person has coronary arteriosclerotic disease and if he is subjected to manual labor, he is certainly aggravating his condition. Of that

there is no doubt in my mind. Whether this patient aggravated his condition enough to cause this, I can't be too definite;

* * * * *

243 Q. That is perfectly all right. Now doctor, do you have anything other than your own suspicion that this man had pre-existing heart disease?

* * * * *

A. He can't die of coronary trouble without having the coronary heart trouble for a period. We believe
244 it is not any sudden or recent thing.

Q. What do you have to indicate that this man had any coronary abnormality or coronary trouble prior to his illness immediately following his lunch on May 27?

A. I don't accept that; if I think that he had a coronary attack on his lunch time, I would know that he had to have coronary trouble before. The only thing I really know is that the death certificate stated coronary heart disease.

Q. Doctor, do I understand that your statement is that it would be impossible for this man to have a thrombus at, let's say, 1 o'clock which would cause his death at 1:10 or 1:20 in the absence of pre-existing heart trouble? A. Yes, you can't have coronary thrombosis without pre-existing coronary heart disease.

Q. Do I understand then that your testimony is that your position—he had it even though he had no symptoms of it? A. No, I mean I can't come out and swear this man died from heart trouble except from the death certificate. I can try to reach my opinions and give them as I can.

Q. Would it be a fair summary of your testimony then to state this: that you think this man's death or his fatal heart attack, let's put it that way, could have been aggravated by his work but it also could have been caused
245 entirely by natural causes? A. Yes, sir.

249

CLAIMANT'S EXHIBIT NO. 1
 CERTIFICATE OF DEATH
 COMMONWEALTH OF VIRGINIA

Department of Health, Bureau of Vital Statistics

Registration
 District No. 2880

State File No. 10636
 Register No.

1. Place of Death: a. County: Spotsylvania; b. City or Town: Fredericksburg, Inside corporate limits.

2. Usual Residence: A. State: Maryland.

c. City or Town: Capitol Heights, Inside Corporate limits.

d. Street Address: 407-60th Ave.

3. Name of Deceased: Thomas Vendemia.

4. Date of Death: May 27, 1952.

5. Sex: M.

6 Color or Race: W.

7. Married, Never Married, Widowed, Divorced (Specify): Married.

8. Date of birth: 1902.

9. Age: 50.

10. Usual Occupation: Iron Worker.

10b. Kind of business or industry: Construction.

11. Birthplace: Italy.

13. Father's Name: Frank Vendemia.

14. Mother's Maiden Name: Not known.

250 Claimant's Exhibit No. 1 (continued)

15. Name of wife of deceased: Jessie Vendemia.

17. Informant's Signature: Melvin Tyler, Address: Capitol Heights (Md.).

18. Cause of Death Enter only one cause per line for (a), (b), and (c). *This does not mean the mode of dying, such as heart failure, asthenia, etc. It means the disease, injury, or complication which caused death.

1. Disease or condition directly leading to death.*

ANTECEDENT CAUSES

Morbid conditions, if any, giving rise to the above cause
(a) stating the underlying cause last.

MEDICAL CERTIFICATION

(a) Coronary embolism.

Due to (b) Exhaustion.

Due to (c) (Died before physician arrived.)

II. Other Significant Conditions: Conditions contributing to the death but not related to the disease or conditions causing death. 4201.

Interval between onset and death: A few minutes.

19a. Date of operation: None.

20. Autopsy? No.

251 Claimant's Exhibit No. 1 (continued)

22. I hereby certify that I attended the deceased from _____, 19____, to _____, 19____, that I last saw the deceased alive on _____, 19____, and that death occurred at 1:20 p.m., from the causes and on the date stated above.

23a. Signature: John E. Cole, Coroner.

23b. Address: Fredericksburg.

23c. Date signed: May 27, 1952.

24a. Burial, cremation, removal (specify): Removal.

24b. Date: May 31, '52.

24d. Location: Maryland.

Date rec'd by local reg.: 5/27/52.

Registrar's Signature: Nena McBurton.

25. Funeral Director's Signature: Elkins Funeral Home.

24. From undertaker: 7/7/52.

Address: Fredericksburg, Va.

I hereby certify that this is a true and correct reproduction of the original certificate on file in the Bureau of Vital Statistics, Virginia Department of Health, Richmond, Virginia.

Estelle Marks, Estelle Marks, State Registrar.

Jul 8 1952

* * * * *

255

DR. JOHN EUGENE COLE

DIRECT EXAMINATION

By Mr. Chadwick:

* * * * *

Q. You are also coroner of this county, are you not? A. I am medical examiner for the City of Fredericksburg, and medical examiner of the County of Spotsylvania. They have three out there, and one here.

Q. Doctor, in your capacity as medical examiner,
256 were you called in connection with the death of Mr. Thomas M. Vendemia? A. Thomas M.—I got it here, yes, sir.

Q. On May 27, 1952? A. Yes, sir.

Q. Will you tell us where you found him? A. I was called to Mary Washington College, which is a branch of the University of Virginia, the female department, and I found him lying in the cab of a truck. It was owned by his employer, the company. I have forgotten the name of the company. You want to know the time?

Q. Yes, sir: about what time was it when you first observed him? A. I saw him—when I first saw him, you mean?

Q. Yes, sir. A. 1:30.

Q. That is P.M.? A. Yes, sir.

Q. That is standard time, is it not? A. Yes, sir.

Q. As distinguished from daylight time. A. Yes, sir.

Q. What was his condition at that time? A. Dead.

* * * * *

258 Q. Did you receive any information as to the activities that he was engaged in immediately preceding his illness? A. Do you mean immediately, the day of his illness?

Q. Yes, sir. A. His son-in-law told me he was an iron worker and was doing some work following his profession.

Q. Had he been work, if you know, immediately prior to his illness? A. As far as I remember, he had put in the morning's work.

* * * * *

259 Q. I want to rephrase that question.

Do you recall whether you were told that this happened immediately after work or after the lunch period?

Mr. Rossner: I withdraw my objections to the question.

A. I was told that while he was eating, he complained of the attack, the pain, I mean, right across his chest.

* * * * *

261 Q. Doctor, based on the history that was given you and on your observations, did you form an opinion concerning the cause of this man's death? A. Yes, sir.

Q. What is your opinion concerning his death? A. I thought from the way the boy, the son-in-law, described his symptoms that it was a heart attack because there was a blockage of the circulation to the heart.

I use synonymously the word "thrombus" and "embolism," but there is a difference in pathology between them. One is a clot that is stationary where it is formed; the other one, the embolism, is a floating one, a moving one, floating in the blood stream, within the blood stream.

* * * * *

262 Q. Doctor, the certificate that we have also states exhaustion as a cause of death. Will you explain to us the significance of that? A. I used the word "exhaustion" to mean that the heart wasn't capable due to the blockage of supplying the rest of the body with the needs of the body, hence death.

Q. I take it then that your testimony is that the exhaustion followed and was a result— A. Was what?

Q. (continuing)—that the exhaustion followed and was

the result of a heart attack. Is that a correct statement?

A. Yes, sir.

* * * * *

Q. Was there any thought on your part that this man might have been a victim of a heat exhaustion or attack?

A. No, sir; none whatsoever.

* * * * *

263 Q. By exhaustion as stated in your report, did you or did you not intend to infer that he might have become exhausted in the course of his work? A. No, it was subsequent to the blockage of the blood stream that wasn't sufficient to meet the needs of the body.

* * * * *

268 A. I have known of similar attacks early in the morning, the victim of the attacks being aroused from sleep or slumber by the onset of coronary thrombosis and that there was no physical exertion at that time.

I can cite you a number of cases of men who have had coronary thrombosis, if you want to use that, or
 269 coronary occlusion, who have never done strenuous work.

* * * * *

291 A. On the assumption that he did—I will answer it this way: on the assumption that he at that time was suffering from coronary occlusion, activity aggravated it.

292 By Mr. Rossner:

Q. All right, sir. Now it is quite possible that he may have— A. But I got no history of him previously suffering from coronary occlusion.

* * * * *

REDIRECT EXAMINATION

By Mr. Chadwick:

Q. Doctor, I want to ask you one or two more questions. You have heard part of the record in Washington, and I call to your attention the testimony concerning Mr. Vendemia's activities on the 26th, the day before, and on the morning of the 27th.

There is further testimony to the effect that on the 26th and on the 27th, and at all times prior to lunchtime of the 27th, he had never made a complaint or shown any signs of having pain.

My question is this: in your opinion did Mr. Vendemia have an embolism, a thrombosis or an occlusion prior to his complaints just after lunch on the 27th?

The Witness: I don't quite understand. Read it over, please.

(The reporter read the pending question.)

The Witness: In my opinion—is that the question?

Mr. Chadwick: Yes, sir.

Mr. Rossner: Yes, sir.

A. From the history I got I would say No.

* * * * *

300 Q. All right, let's say then did his activities on May 26 and 27 hasten his death? A. A. I cannot honestly say it did or it did not.

* * * * *

304 Q. Doctor, you state that it wouldn't alone cause it. Based on the history as you have heard it stated here this morning, and based on the history as it was given to you, including the absence of symptoms right up to the time that he finished his meal on May 27, do you think that his work brought on, aggravated, or added to his

heart attack; or do you think it had anything to do with his death?

* * * * *

305 A. If he had a coronary condition—I mean a cardiac condition—existing at the time, strenuous work added to the condition and aggravated it.

* * * * *

316 DR. BERNARD J. WALSH

* * * * *

317 Q. Do you have a specialty? A. Yes.

Q. What is that? A. Limited to the diseases of the heart and vascular system.

* * * * *

Q. Does the occurrence of coronary thrombosis bear any relationship with the activity or inactivity of the patient? A. No.

* * * * *

323 Now, Doctor, based on the facts as I have given them to you, I would like to ask this question. Do you think Mr. Vendemia died of coronary thrombosis? A. I should think it probable that he did.

Q. Would that history, culminating in his death, be consistent with any other condition? A. Yes. Of course there are numerous conditions that could certainly account for the same set of circumstances. Actually in this instance no one knows what Mr. Vendemia died of because the diagnosis as made by the coroner is pure assumption on his part. Lacking an autopsy, lacking actual concrete evidence—that is, other concrete evidence—as to just exactly the circumstances in more detail than you have given them; in other words, a history taken of the patient by a physi-

cian; lacking clinical observation while he was living, particularly, say, the taking of a cardiogram before his death after the onset of his illness—without all of these pieces of evidence, no one but the Lord knows exactly what Mr. Vendemia died of. So it is wholly an assumption that he died of coronary heart disease.

324 He could have as well died of a number of other things such as dissecting aneurism, which is a shredding of the aorta. He could have died of a ruptured sacular aneurism just as easily, with the same set of circumstances, exactly as you have recited them. So there is no way of knowing exactly what Mr. Vendemia died of.

Q. Doctor, assuming for the moment that he did die of coronary thrombosis, based on the history as I have given it to you when do you first find evidence of an attack of coronary thrombosis?

* * * * *

A. The first evidence was when Mr. Vendemia complained of chest pain that he considered indigestion, which from the recitation as you have given it was shortly after he finished his lunch, or toward the end of his lunch period.

* * * * *

Q. In view of the fact that he had been resting and eating lunch for about half an hour immediately prior to his attack, and considering the other history as given to you previously, do you think Mr. Vendemia's working activities on May 27 or at any other time caused or materially aggravated his attack of coronary thrombosis or whatever else may have caused his death? A. No, I do not.

* * * * *

326 CROSS EXAMINATION

By Mr. Rossner:

* * * * *

327 Q. In this particular case no mention has been made up to this time of the work that was being done that morning. I refer to Mr. Tyler's testimony on page 91. He indicates that they were carrying templates—that is, he, Tyler, who was a young man, and Vendemia, who was a man 50 years old—were carrying templates up and down steps which weighed 50 to 75 pounds. Tyler says that they went up and down the steps 70 or 80 times in that half day. That is what Tyler says himself.

To break that down a little bit more, Tyler on page 94 of his testimony says that he went up and down with Vendemia from the basement to the second floor, which is a total of 40 steps. They went up and down that 30 times or
328 more. That is what Tyler says, who was with the decedent. When they went up and down these steps they were carrying this template which weighed between 50 to 75 pounds.

In addition to that, they went up and down from the first floor to the second floor—page 97—30 or 40 times carrying this template again.

If a man had a condition such as you have already stated in your opinion Vendemia had, wouldn't that work that morning aggravate an existing condition which you have already said he had? A. In the absence of symptoms you can't say that it did. It is a matter of record here, apparently from what I have heard, that he had no symptoms until at the end of his lunch period. Therefore no one can say that it aggravated his condition, assuming that he had such.

* * * * *

332 Q. Could this work activity that he did immediately after lunch have aggravated his condition so as to cause his death? A. I would like to ask one point here to be made clear, actually as a preface to this question. Are you saying that his symptoms began before he put this

rail up on the horses and so on as the recitation that I have heard indicated?

Q. His symptoms actually did begin before he commenced doing this physical work subsequent to lunch. A. It certainly could have aggravated it.

Q. It could have aggravated it. Then your answer to the question is yes, that it could have aggravated it? A. Yes, because the process was already afoot. He already had his first significant symptom.

* * * * *

333 Q. Suppose I well to tell you immediately before he went to lunch that he and this boy Tyler took a 150 pound rail and carried it up 20 steps and tried to fit it in and it didn't work out, and they left it up there and then they dragged another 150 pound rail up 20 steps and they tried to fit it and it didn't fit; and then they went to lunch. Do you think their activities carrying these 150 pound rails up and down the steps might aggravate any heart condition that Vendemia had? A. It might. I would agree to that; it might.

* * * * *

335 Q. On page 113 it is indicated that Vendemia and Tyler, after they lugged the 150 pound rail up the staircase—they carried it up 20 steps to the balcony, which is right here—had to lift it back and forth some 30 to 40 times in order to get it to fit in. Would this activity immediately prior to lunchtime account for his condition which occurred during lunchtime?

Mr. Chadwick: I would like to object to that and state that there is one additional fact that has not been stated, namely, that according to Mr. Tyler the work that they did just before lunch, which consists of putting these railings in the sleeves, was not as strenuous as the work they had done earlier that morning; that for a half or three-

quarters of an hour just prior to lunch the work they were doing was not as strenuous as the work they were doing earlier.

The Deputy Commissioner: Doctor, in considering your answer to the question, I think you will have to use your own judgment as to how strenuous it was comparatively when they lifted those rails to fit them into the sleeves.

A. I think the actual critical evidence here, when the facts are as you stated them, namely, fitting these rails into sleeves, is that there is no evidence that the man had any complaint while so doing or immediately thereafter. He

336 had no complaint that was significant of what his fatal illness proved to be—or at least that he had a fatal illness. There was no evidence until the end of his lunch period. He had no symptoms to suggest any organic upset while he was doing these things. Therefore, there is no real reason to believe that there was any relationship between those acts and the cause of his death.

* * * * *

339 Q. In this case here this man did have lunch, and thereafter he did go back to work. Is it possible,
340 number one, that the combination of the work he did before lunch and the fact that he ate lunch and did go back and do other work thereafter, which I previously described to you, all these things added together could have caused a coronary condition to manifest itself? A. It is possible, yes.

* * * * *

Q. You have heard Mr. Vendemia's work activities on that particular day pretty much in detail. In your opinion, assuming he had an existing heart condition, could they have aggravated his condition? A. They could have, but there is no evidence that they did.

* * * * *

343 Q. What again is the treatment for a man who has coronary thrombosis? A. You are speaking of acute coronary thrombosis?

Q. Acute. A. Bed rest, relief of pain, limitation of meals, perhaps the use of anti-coagulants and other symptomatic measures.

Q. Have you ever in your experiences come across cases of heart attacks where there have never been symptoms prior to the man dying? A. That is frequent.

344 Q. Would you agree with the statement that has been previously made here by another doctor pertaining to the same set of facts, "If he"—meaning Vendemia—"had been working unduly hard for a certain several days, he could have gradually been straining or bringing this up to the point where he would have had a heart attack?" Do you agree with that statement? A. You used the word "could." Yes, he could, but I don't think he did.

* * * * *

347 REDIRECT EXAMINATION

By Mr. Chadwick:

Q. Doctor, based on the facts that were given to you, do you think this man did have a coronary occlusion prior to 12:30 on the day of his death? A. No.

Q. You were asked earlier whether his work activities before lunch might have aggravated a heart condition. Based on the facts as were given you earlier in Mr. Vendemia's case, do you think his activities before lunch that morning or the day before—several days before—did aggravate any condition? A. No.

Q. Doctor, we now know that there was a heart attack, and you have heard the evidence as to time. Say it is approximately 12:30, and this man died within a very short time. We now know that. In view of the fact that this was a heart attack, an occlusion, a thrombosis, of such magnitude as to cause his death within a matter of minutes,

do you think the activities which he engaged in immediately after lunch materially aggravated or hastened his demise?
A. Probably not.

* * * * *

348 The Deputy Commissioner: Dr. Walsh, you will recall that earlier in your testimony you described for us the difference between a thrombosis and an embolism, in that a thrombosis was a fixed clot and the embolism a floating clot. In practically all the questions that have been submitted to you this morning, mention has been made of a coronary thrombosis. The official cause of death as expressed by the coroner was a coronary embolism. Would that alter your testimony in any way?

The Witness: No, sir, because I would feel sure that what the coroner meant was coronary thrombosis, because coronary embolism is a very rare condition and happens really—of course it can be made only at an autopsy; it can never be made clinically.

* * * * *

349 Mr. Chadwick: Mr. Commissioner, for the purpose of the record Mr. Rossner and I are willing to agree that the coroner used the term "coronary embolism" synonymously with coronary thrombosis.

The Deputy Commissioner: Is that correct, Mr. Rossner?

Mr. Rossner: That is correct.

* * * * *

DR. JOHN ALFRED REISINGER

* * * * *

351 Q. Does the occurrence of coronary thrombosis bear any relationship to the activity of the patient?

A. Not usually.

* * * * *

356 A. I think it is probable that he had a myocardial infraction as a result of a coronary occlusion or coronary thrombosis.

* * * * *

357 Q. Can you tell, based on the facts and history as they have been given to you, which condition Mr. Vendemia had? A. There is no way of being absolutely certain without more objective evidence such as one would get from an autopsy. But the history of typical type of pain and the statistical probability would make it reasonable to give the diagnosis of a coronary thrombosis causing myocardia infraction.

* * * * *

358 Q. Assuming that this man did die of a coronary thrombosis, based on the history that has been given to you when do you think there was first evidence of the development of that thrombosis? A. The first evidence that is given by this history is certainly when he developed pain.

* * * * *

Q. Doctor, if a coronary thrombosis is severe enough to cause death within a period of minutes, would you normally expect that attack to be accompanied by pain? A. Yes.

Q. Suppose that he had had an attack of coronary thrombosis during the time he was engaged in strenuous work in the morning, and that he had continued strenuous activity with an attack of coronary thrombosis then present. What effect, if any, do you think his work would have had on the course of his illness? A. Assuming that he had had a coronary thrombosis before the noon time?

Q. While he was working and that he continued strenuous activity thereafter. A. Oh, I would expect that the work would greatly aggravate his symptoms, and in fact preclude continuation of work.

359 Q. Doctor, in view of the fact that Mr. Vendemia

was resting and eating lunch for a half-hour immediately prior to his attack; and considering the other history as it has previously been given to you, do you think that Mr. Vendemia's working activities on the day of his death caused or materially aggravated his attack of coronary thrombosis or whatever it was that caused his death? A. I think it is very unlikely.

* * * * *

CROSS EXAMINATION

By Mr. Rossner:

* * * * *

Q. In your opinion do you believe the work activities of this man on May 27 may have hastened a heart attack on his part, assuming he had a heart condition?

* * * * *

361 A. Assuming that he had a heart condition, I think strenuous work might have aggravated his condition. Of course we are not defining what we meant by heart condition, of which there are a great many different types.

Q. Doctor, it has been pointed out in previous testimony that he was working with a fellow employee, and that in the course of events they carried templates up and down certain flights of steps. As a matter of fact, they carried these templates from the basement to the second floor, a template weighing 50 to 75 pounds. They carried these templates from the basement up to the second floor about thirty times or more in the morning, and that is a total of 40 steps.

In addition to that, they took these templates and carried them from the first floor to the second floor, and from the first floor to the second floor is a total of 20 steps.

Would you consider that strenuous work? A. Yes, I would consider that strenuous work.

Q. Would you consider that that work could possibly affect a man who has a heart condition? Could it cause him to aggravate an existing heart condition? A. I think it probably would aggravate an existing heart condition.

Q. Suppose we take these same two individuals. Immediately prior to lunch, from 11:00 to 12:00, these same two individuals, the decedent and his fellow employee, moved 150 pound rail up to the first floor—a 150 pound rail, two men. The steps up to the first floor totaled 20 steps. They took one rail up 20 steps and laid it down; they went down and got another rail, 150 pounds, and brought that up and carried that rail up and laid it down; and then they endeavored to fit these rails into certain sleeves.

These sleeves are holes made in the concrete. The holes made in the concrete are supposed to be placed in a position where the iron rails fit right into the hole. They had a difficult time doing that, and they had to move the rails back and forth; that is, lift them up and try to put them in the hole and take them back down. They did that some thirty or forty times between 11:00 and 12:00 o'clock.

* * * * *

363 Q. Could that activity prior to lunch aggravate an existing heart condition on the part of Vendemia?

A. I think that could aggravate an existing heart condition. As I understand it, it was an accustomed activity that he did every day.

364 Q. Your answer is that it could. Is that correct? A. Yes.

* * * * *

Q. This man ate lunch. Are there any statistics as to a coronary thrombosis manifesting itself subsequent to eating? A. I think there is evidence that eating is added

work and sometimes precedes the onset of manifestations of coronary insufficiency.

Q. Subsequent to lunchtime, Vendemia with Tyler set up some rails on horses. The rail weight is either 75 to 80 pounds, or 150 pounds; I am not quite certain which it is. Thereafter Vendemia plumbed it, wedged it, and thereafter got a ladle. Would that work activity, based in conjunction with the other work activity he performed—the lunch he ate and his work activity just related after lunch—would all those things cumulatively tend to aggravate an existing heart condition, assuming he had one? A. Yes, I think they might aggravate an existing heart condition.

Q. There has been previous testimony in this case, and I quote from page 11—

The Deputy Commissioner: Page 11 of what, Mr. Rossner?

Mr. Rossner: Page 11 of Dr. Miller's testimony. This is the same question I have propounded previously.

By Mr. Rossner:

Q. "If he"—meaning Vendemia—"had been working unduly hard for a certain several days, he could have gradually been strained or bringing this up to a point where he would have had a heart attack. That certainly does happen." Do you disagree with that statement?

* * * * *

367 A. I don't believe that I agree with that statement as made. In the first place the terms are very inexact. I don't know what he means by strain. I don't know what he means by heart attack. In the first place, we all may have normal hearts and then suffer coronary thrombosis, and within thirty minutes have an abnormal heart. In other words we don't have heart disease until we have had some damage to our heart muscle.

We may all of us have coronary arteriosclerosis or atherosclerosis that doesn't produce any symptoms nor does it even cause any damage to the heart muscle; and until there is damage to the heart muscle, then we do not have heart disease. I can't conceive of the situation in which strain would build up over a period of time that would cause coronary thrombosis which might precipitate a myocardial infarction, because we know that many people develop it while they are asleep, in which there is no effort involved, and in which perhaps the circulation is more sluggish and which might be more favorable to the deposition of a clot than when the circulation is more vigorous and active as in exercise.

In other types of heart disease we could think of the term "strain" as applicable, but not in coronary thrombosis.

* * * * *

369 Q. This man did a tremendous amount of stair climbing that day. You already know what they are. He has been up and down these stairs carrying these heavy templates. Could his work activities that day have aggravated an existing heart condition? A. I think they could have aggravated an existing heart condition.

Q. Going back to the previous day that he had worked could cumulative factors result in his meeting his death that day from an aggravation of an existing heart condition? A. Would you define what kind of heart condition you mean?

Q. Coronary thrombosis. A. No, I don't think that cumulative efforts would be important in an acute coronary thrombosis.

* * * * *

370 By Mr. Chadwick:

Q. Doctor, you were asked by Mr. Rossner whether strenuous work could possibly affect a prior heart condi-

tion. You were asked whether Mr. Vendemia's activities on the day in question could aggravate an existing heart condition. You were asked whether activities plus a lunch would tend to aggravate an existing heart condition. And you answered those several questions in the affirmative.

Now I want to ask you this question. In your opinion did Mr. Vendemia have an existing heart condition prior to the time of his complaints at the close of lunch that day? A. I don't think that there is any evidence at all that he had a heart condition prior to the onset of pain.

* * * * *

RECROSS EXAMINATION

By Mr. Rossner:

Q. What did this man die of, Doctor? A. I think it is probable he died of myocardial infarction due to coronary thrombosis.

371 Q. Then he died of a heart condition. Is that correct? A. Yes, sir.

Q. And the questions that I asked you were based upon the assumption that he had a heart condition. Is that correct? A. The assumption that he had a heart condition, but I don't assume that he had a heart condition prior to the time of the onset of pain.

* * * * *

373 Filed Jan. 5, 1954. Harry M. Hull, Clerk

IN THE

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Civil Action No. 5327-53.

Jessie L. Vendemia, Plaintiff, v. Anthony J. Cristaldi, Et
Al., Defendants.

STIPULATION

It is hereby stipulated by the attorneys for the respective parties that the transcript of testimony, blueprints, photographs, etc., introduced and taken into evidence before the Deputy Commissioner in the above-entitled cause be considered a part of the Complaint.

(s) B. A. Chadwick, Jr., Attorney for Employers and Insurance Carrier; Catherine B. Kelly, Asst. United States District Attorney; W. E. Boate, Attorney for Bureau of Employees' Compensation; Benjamin F. Rossner, Attorney for Plaintiff.

* * * * *

374 Filed Jan. 19, 1954. Harry M. Hull, Clerk

Civil Action No. 5327-53.

Jessie L. Vendemia, Widow of Thomas Vendemia, Plaintiff, v. Anthony J. Cristaldi, Philip P. Cristaldi, Joseph P. Cristaldi, Partners, T/A Criss Bros. and Company; Employers Mutual Liability Insurance Company of Wisconsin, Inc., a Corporation; P. J. Donovan, Deputy Commissioner, District of Columbia Compensation District, Bureau of Employees' Compensation, Defendants.

DEFENDANT DONOVAN'S MOTION FOR SUMMARY JUDGMENT

Defendant Donovan, by his attorneys, moves this Honorable Court for summary judgment in his favor upon the ground that it appears from the complaint together with the transcript of testimony taken before the defendant Deputy Commissioner that the compensation order complained of is in accordance with law, that there is no genuine issue as to any material fact, and that defendant is entitled to a judgment as a matter of law.

(s) Leo A. Rover, United States Attorney; Catherine B. Kelly, Assistant United States Attorney, Attorneys for Defendant Donovan.

* * * * *

396 Filed Jan. 30, 1954. Harry M. Hull, Clerk

Civil Action No. 5327-53.

Jessie L. Vendemia, Widow of Thomas Vendemia, Plaintiff,
v. Anthony J. Cristaldi, Philip P. Cristaldi, Joseph P.
Cristaldi, Partners, T/A Criss Bros. and Company; Em-
ployers Mutual Liability Insurance Company of Wiscon-
sin, Inc., a Corporation; P. J. Donovan, Deputy Commis-
sioner, District of Columbia Compensation District, Bu-
reau of Employees' Compensation, Defendants.

MOTION FOR SUMMARY JUDGMENT

Come now the defendants, Anthony J. Cristaldi, Philip P. Cristaldi and Joseph P. Cristaldi, T/A Criss Bros. and Company, and Employers Mutual Liability Insurance Company of Wisconsin, Inc., a corporation, by their attorneys, Frost & Towers, and move this Honorable Court for summary judgment in their favor upon the ground that it appears from the complaint together with the transcript of testimony taken before the defendant Deputy Commissioner that the compensation order complained of is in accordance with law, that there is no genuine issue as to any material fact, and that these defendants are entitled to a judgment as a matter of law.

(s) Frost & Towers, by B. A. Chadwick, Jr., 605 Southern Bldg., Attorneys for Defendants, Anthony J. Cristaldi, Philip P. Cristaldi and Joseph P. Cristaldi, T/A Criss Bros. and Company, and Employers Mutual Liability Insurance Company of Wisconsin, Inc., a corporation.

397 MEMORANDUM OF POINTS AND AU-
THORITIES IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

In support of the motion for summary judgment filed herein in behalf of defendants, Cristaldi and Employers

Mutual Liability Insurance Company of Wisconsin, Inc., these defendants hereby adopt the memorandum of points and authorities filed herein in behalf of the defendant Deputy Commissioner.

(s) Frost & Towers, by B. A. Chadwick, Jr., Attorneys for Defendants, Cristaldi and Employers Mutual Liability Insurance Company of Wisconsin, Inc., a corporation.

CERTIFICATE OF MAILING

We hereby certify that on January 29, 1954, we served a copy of the above motion for summary judgment and memorandum of points and authorities in support thereof on Benjamin F. Rossner, Esq., Barr Bldg., 910 - 17th St., N.W., Washington 6, D. C., attorney for plaintiffs, and Leo A. Rover, Esq., United States Attorney, and Ward E. Boote, Esq., Assistant Solicitor, United States Department of Labor, attorneys for defendant Donovan.

(s) Frost & Towers, by B. A. Chadwick, Jr.

398 Filed Feb. 3, 1954. Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 5327-53.

Jessie L. Vendemia, Plaintiff, v. Anthony J. Cristaldi, et al.,
Defendants.

OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

Plaintiff by her attorney states the defendants' motions for summary judgment should be denied for the following reasons:

1. That the plaintiff has a valid claim for relief and as

a matter of law upon admitted or established facts is entitled to prevail.

2. That there are issues for the court to determine.

3. That defendants do not show they are entitled to a judgment beyond all reasonable doubt. The complaint raises substantial dispute as to material facts and the allegations therein must be taken as true.

4. That the defendants are not entitled to a judgment as a matter of law.

(s) Benjamin F. Rossner, Attorney for Plaintiff,
910 - 17th Street, N.W., Washington 6, D. C., District 7-6700.

A copy of the above opposition and points and authorities have been mailed this 2nd day of February, 1954 to:

(1) Catherine B. Kelly, Asst. U. S. Attorney, U. S. Court House. (2) Ward E. Boote, Esquire, Assistant Solicitor, U. S. Dept. of Labor. (3) George Chadwick, Esquire, Southern Building, Washington, D. C.

(s) Benjamin F. Rossner, Attorney for Plaintiff.

403 Filed Feb. 3, 1954. Harry M. Hull, Clerk

* * * * *

Civil Action No. 5327-53.

Jessie L. Vendemia, Plaintiff, v. Anthony J. Cristaldi, et al.,
Defendants.

CROSS MOTION OF PLAINTIFF FOR SUMMARY JUDGMENT

Plaintiff, Jessie L. Vendemia, widow of Thomas Vendemia, by her attorney, moves this Court for a Summary Judgment in her favor upon the grounds that the findings of the Deputy Commissioner are not supported by substantial evidence and is not in accordance with law.

That there is substantial evidence on the record which when considered as a whole, as a matter of law entitles plaintiff to have this Court vacate the rejection order of the Deputy Commissioner dated November 5, 1953 and enter a decree requiring the appropriate award be made to the plaintiff, Jessie L. Venedmia, widow of Thomas Vendemia.

(s) Benjamin F. Rossner, Attorney for Plaintiff,
910 - 17th Street, N.W., Washington 6, D. C., Dis-
trict 7-6700.

Copy of the foregoing Cross Motion and Points and authorities attached, mailed postage prepaid this 2nd day of February, 1954 to: (1) Catherine B. Kelly, Asst. U. S. Attorney, U. S. Court House. (2) Ward E. Boote, Esquire, Assistant Solicitor, U. S. Dept. of Labor. (3) George Chadwick, Esquire, Southern Building.

(s) Benjamin F. Rossner.

406 Filed Apr. 1, 1954. Harry M. Hull, Clerk

* * * * *

Civil Action No. 5327-53.

Jessie L. Vendemia, Widow of Thomas Vendemia, Plaintiff,
v. Anthony J. Cristaldi, Philip P. Cristaldi, Joseph P.
Cristaldi, Partners, T/A Criss Bros. and Company; Em-
ployers Mutual Liability Insurance Company of Wis-
consin, Inc., a Corporation; P. J. Donovan, Deputy Com-
missioner, District of Columbia Compensation District,
Bureau of Employees' Compensation, Defendants.

ORDER GRANTING SUMMARY JUDGMENT

This action came on to be heard upon the respective motions of plaintiff, defendant Donovan, defendants Cris-

taldi and defendant Employers Mutual Liability Insurance Company of Wisconsin, Inc., for summary judgment and the court having found that there is no genuine issue as to any material fact, and that defendants are entitled to judgment as a matter of law, it is this 1st of April, 1954,

Ordered, Adjudged and Decreed that plaintiff's motion for summary judgment be and the same hereby is denied, and it is further

Ordered, Adjudged and Decreed that defendants' respective motions for summary judgment be and the same hereby are granted, and it is further

Ordered, Adjudged and Decreed that the complaint be and the same hereby is dismissed.

(s) Edward M. Curran, Judge.

No objection as to form:

B. F. Rossner, Attorney for Plaintiff.

407 Filed Apr. 3, 1954. Harry M. Hull, Clerk

* * * * *

Civil Action No. 5327-53.

Jessie L. Vendemia, Plaintiff, v. (1) Anthony J. Cristaldi, Philip P. Cristaldi, Defendant; Joseph P. Cristaldi, Partners, T/A Criss Bros. & Company; (2) Employers Mutual Liability Ins. Co. of Wisconsin, Inc., a Corporation; (3) P. J. Donovan, Deputy Commissioner.

NOTICE OF APPEAL

Notice is hereby given this 3rd day of April, 1954, that Jessie L. Vendemia hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 1st day of April, 1954, defendants Anthony J. Cristaldi, Joseph P. Cristaldi, Philip P. in favor of Cristaldi partners t/a Criss Bros. &

Company, Employers Mutual Liability Ins. Co. of Wisconsin, Inc., a Corporation, and P. J. Donovan, against said Jessie L. Vendemia.

(s) Benjamin F. Rossner,
Attorney for Plaintiff,
Barr Building.

* * * * *

408 Filed Apr. 6, 1954. Harry M. Hull, Clerk

* * * * *

Civil Action No. 5327-53.

Jessie L. Vendemia, Plaintiff, v. Anthony J. Cristaldi, et al.,
Defendants.

ORDER

Upon consideration of the oral Motion of the plaintiff filed herein, it is by the court this 6th day of April, 1954,

Ordered that the entire Record as designated and the Proceedings before P. J. Donovan, Deputy Commissioner, District of Columbia Compensation Board, including depositions, blueprints, photographs, etc., which record has been before this Honorable Court, be and the same is hereby designated for transmission to the U. S. Court of Appeals in lieu of making a copy thereof.

(s) Edward M. Curran, Judge.

Brief for Appellee Donovan

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12239

JESSIE L. VENDEMIAS, WIDOW OF THOMAS VENDEMIAS,
APPELLANT

v.

- (1) ANTHONY J. CRISTALDI, PHILIP P. CRISTALDI, JOSEPH P. CRISTALDI, PARTNERS, T/A CRISS BROS. AND COMPANY
 - (2) EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY OF WISCONSIN, INC.
 - (3) P. J. DONOVAN, DEPUTY COMMISSIONER, D. C. COMPENSATION DISTRICT, BUREAU OF EMPLOYEES COMPENSATION, APPELLEES
-

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

LEO A. ROVER,

United States Attorney,

LEWIS CARROLL,

Assistant United States Attorney,

Attorneys for Appellee Donovan.

STUART ROTHMAN,

Solicitor of Labor,

WARD E. BOOTE,

Assistant Solicitor,

HERBERT P. MILLER,

*Attorney, U. S. Department of Labor,
Of Counsel.*

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED

OCT 1 1954

Joseph W. Stewart

CLERK

STATEMENT OF QUESTION

In the opinion of appellee Donovan the question is: Does the record as a whole support the deputy commissioner's finding that the death of the employee did not result from an injury arising out of and in the course of employment?

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12239

JESSIE L. VENDEMIA, WIDOW OF THOMAS VENDEMIA,
APPELLANT

v.

- (1) ANTHONY J. CRISTALDI, PHILIP P. CRISTALDI, JOSEPH
P. CRISTALDI, PARTNERS, T/A CRISS BROS. AND COM-
PANY
- (2) EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY OF
WISCONSIN, INC.
- (3) P. J. DONOVAN, DEPUTY COMMISSIONER, D. C. COMPEN-
SATION DISTRICT, BUREAU OF EMPLOYEES COMPENSATION,
APPELLEES

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEE DONOVAN

COUNTERSTATEMENT OF CASE

This case arises upon a complaint to review and set aside as not in accordance with law a compensation order filed on November 5, 1953 by P. J. Donovan, Deputy Commissioner, Bureau of Employees' Compensation, United States Department of Labor, in which order the deputy commissioner rejected the claim for compensation of the appellant (plain-

tiff below) Jessie L. Vendemia. The said order was issued pursuant to the provisions of the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, 44 Stat. 1424, 33 U. S. C. Sec. 901 et seq., as made applicable to the District of Columbia by the Act of May 17, 1928, 45 Stat. 600, D.C. Code 36-501 et seq.

THE COMPENSATION ORDER

In the compensation order complained of, the Deputy Commissioner found the facts to be in part as follows:

"That on May 27, 1952, Thomas Vendemia * * * performed services for the employer as an ornamental ironworker at Mary Washington College, Fredericksburg, Virginia; that the employee had been engaged as an ornamental iron-worker for approximately 25 years, and had been employed with Criss Bros. and Company in this type of work since June 1946; that prior to May 27, 1952, the only known illness suffered by the employee was a rectal abscess in December 1950, and he had completely recovered from this condition as of December 8, 1950; that on May 27, 1952, from 7:30 a. m. to 11:15 a. m., the employee, accompanied by a fellow employee, was engaged in making templates for railings on concrete stairs; that the employer's truck was parked about 35 feet from the building in which the stairs were located; that there were 6 steps from the building basement to the first landing, 14 steps from the first landing to the first floor, 10 steps from the first floor to the second landing, and 10 steps from the second landing to the second floor; that the making of the templates consisted of taking pieces of 1/4-inch by 1 1/2-inch flat iron approximately 16 to 17 feet in length, each piece weighing 50 to 75 pounds, laying them on the stairs and marking them to form patterns to insure true fabrication; that in making the templates it was necessary to heat the iron with an acetylene torch and bend it with an anvil and hammer; that after the flat iron was marked it was carried to the truck, heated with the acetylene torch, and bent with a hammer, then car-

ried from the truck to the stairs; that this process was repeated until a true measurement was obtained; that from 11:15 a. m. to 12 noon on May 27, 1952, the employee and his fellow-worker were engaged in attempting to fit assembled rails into sleeves; that they carried 2 rails, weighing about 75 pounds each, from the basement to the first floor; that the estimated weather temperatures at Fredericksburg on May 27, 1952, were 69 degrees Fahrenheit at 8:30 a. m., 74 degrees at 10:30 a.m., 77 to 78 degrees at 12:30 noon, and 79 degrees at 2:30 p. m.; that the estimated humidity at noon was 34 to 40 per cent; that from 12 noon to 12:30 the employee stopped work to eat his lunch; that shortly after eating his lunch he complained to his fellow-employee of pain in the chest, and went to secure a drink of water; that upon the employee's return he did not look well and he went and got another drink of water; that he then left the building and went to the truck and lay down on the seat in the cab of the truck, where he was found a short time later by his fellow-employee; that he died at 1:30 p. m. of coronary thrombosis; that Jessie L. Vendemia, who was born on June 29, 1905, and married to the decedent on September 20, 1924, is the surviving wife of the employee and on July 8, 1952, she filed claim against the employer for death benefits under the District of Columbia Workmen's Compensation Act, alleging that the death of the employee arose out of and in the course of the employment; that the death of the employee was not caused by an injury arising out of and in the course of the employment."

Appellant brought this proceeding for judicial review of said order pursuant to the provisions of Section 21(b) of the compensation law, 33 U. S. C. Sec. 921(b). The court below sustained the order. This appeal followed.

SUMMARY OF ARGUMENT

The record supports the deputy commissioner's finding that the death of the deceased was not caused by an injury arising out of and in the course of employment, a requisite

to recovery. Hence the compensation order rejecting the compensation claim was in accordance with law.

ARGUMENT

I

The Record Supports the Finding that the Death of the Employee did not Result from an Injury Arising out of and in the Course of Employment.

(a) Applicable Principles

Before referring to the evidence in the record, it may be appropriate to invite attention to the following well established principles of compensation law.

The burden is on the plaintiff to show that the evidence before the deputy commissioner does not support the compensation order complained of in the bill: *Grant v. Marshall, Deputy Commissioner*, 56 F. 2d 654 (Wash. 1931); *United Employees Casualty Co. v. Summerour*, 151 S.W. 2d 247 (Tex. Civ. App. 1941); *Nelson v. Marshall, Deputy Commissioner*, 56 F. 2d 654 (Wash. 1931); *Gulf Oil Corporation v. McManigal, Deputy Commissioner*, 49 F. Supp. 75 (W. Va. 1943); *Southern Stevedoring Co. v. Henderson, Deputy Commissioner*, 175 F. 2d 863 (C.A. 5, 1949).

The findings of fact of the deputy commissioner supported by evidence on the record considered as a whole should be regarded as final and conclusive and not subject to judicial review: *O'Leary, Deputy Commissioner v. Brown-Pacific-Maxon, Inc.*, 340 U. S. 504 (1951); *South Chicago Coal & Dock Co. v. Bassett, Deputy Commissioner*, 309 U.S. 251 (1940); *Del Vecchio v. Bowers*, 296 U. S. 280 (1935); *Voehl v. Indemnity Insurance Co. of North America*, 288 U. S. 162 (1933); *Crowell, Deputy Commissioner v. Benson*, 285 U. S. 22 (1932); *Jules C. L'Hote v. Crowell, Deputy Commissioner*, 286 U. S. 528 (1932); 71 C. J. 1297, sec. 1268; *Parker, Deputy Commissioner v. Motor Boat Sales, Inc.*, 314 U. S. 244 (1941); *Marshall, Deputy Commissioner v. Pletz*, 317 U. S. 383 (1943); *Cardillo, Deputy Commissioner v. Liberty Mutual Insurance Company*, 330 U. S. 469 (1947). Accord:

Pittston Stevedoring Co. v. Willard, Deputy Commissioner, 190 F. 2d 267 (C.A. 2, 1951); *United States Fidelity & Guaranty Co. v. Britton, Deputy Commissioner*, 88 App. D.C. 293, 188 F. 2d 674 (1951).

Logical deductions and inferences which may be and are drawn by the deputy commissioner from the evidence should be taken as established facts and are not judicially reviewable: *Parker, Deputy Commissioner v. Motor Boat Sales, Inc.*, 314 U. S. 244 (1941); *Crescent Wharf & Warehouse Co. v. Cyr, Deputy Commissioner*, 200 F. 2d 633 (C.A. 9, 1952); *Liberty Mutual Ins. Co. v. Gray, Deputy Commissioner*, 137 F. 2d 926 (C.A. 9, 1943); *Michigan Transit Corporation v. Brown Deputy Commissioner*, 56 F. 2d 200 (Mich. 1929); *Del Vecchio v. Bowers*, 296 U. S. 280 (1935); *Eastern Steamship Lines, Inc. v. Monahan, Deputy Commissioner*, 21 F. Supp. 535 (Me. 1937); *Grain Handling Co., Inc. v. McManigal, Deputy Commissioner*, 23 F. Supp. 748 (N.Y. 1938); *Simmons v. Marshall, Deputy Commissioner*, 94 F. 2d 850 (C.A. 9, 1938); *Lowe, Deputy Commissioner v. Central R. Co. of New Jersey*, 113 F. 2d 413 (C.A. 3, 1940); *Contractors, PNAB v. Pillsbury, Deputy Commissioner*, 150 F. 2d 310 (C.A. 9, 1945); *Southern Stevedoring Co. v. Henderson, Deputy Commissioner*, 175 F. 2d 863 (C.A. 5, 1949).

The findings of fact of the deputy commissioner are presumed to be correct: *Anderson v. Hoage, Deputy Commissioner*, 63 App. D.C. 169, 70 F. 2d 773 (1934); *Luckenbach Steamship Co., Inc. v. Norton, Deputy Commissioner*, 96 F. 2d 764 (C.A. 3, 1938); *Burley Welding Works, Inc. v. Lawson, Deputy Commissioner*, 141 F. 2d 964 (C.A. 5, 1944).

It is solely within the province of the deputy commissioner or compensation administrator to determine the credibility of witnesses, and such official may believe all or any part of the testimony according to his own sound judgment of its truthfulness and reliability: *Wilson & Co., Inc. v. Locke, Deputy Commissioner*, 50 F. 2d 81 (C.A. 2, 1931); *Naida v. Russell Mining Co.*, 159 Pa. Super. 155, 48 A. 2d 16 (1946); *Griffin's Case*, 315 Mass. 71, 51 N.E. 2d 768 (1944); *Pittsburgh Plate Glass Co. v. Morgeson*, 198 Okla. 215, 177 P. 2d

115 (1947); *Lockheed Aircraft v. Industrial Accident Commission*, 28 Cal. 2d 756, 172 P. 2d 1 (1946); *Square D Co. v. O'Neal*, 117 Ind. App. 92, 66 N.E. 2d 898 (1946).

Even if the evidence permits conflicting inferences, the inference drawn by the deputy commissioner is not subject to review and will not be reweighed: *C. F. Lytle Co. v. Whipple, Deputy Commissioner*, 156 F. 2d 155 (C.A. 9, 1946); *Contractors, PNAB v. Pillsbury, Deputy Commissioner*, 150 F. 2d 310 (C.A. 9, 1945); *South Chicago Coal & Dock Co. v. Bassett, Deputy Commissioner*, 309 U. S. 251 (1940); *Parker, Deputy Commissioner v. Motor Boat Sales, Inc.*, 314 U. S. 244 (1941); *Liberty Mutual Insurance Co. v. Gray, Deputy Commissioner*, 137 F. 2d 926 (C.A. 9, 1943); *Lowe, Deputy Commissioner v. Central R. Co. of New Jersey*, 113 F. 2d 413 (C.A. 3, 1940); *Henderson, Deputy Commissioner v. Pate Stevedoring Co., Inc.*, 134 F. 2d 440 (C.A. 5, 1943); *Del Vecchio v. Bowers*, 296 U. S. 280 (1935); *Southern Stevedoring Co. v. Henderson, Deputy Commissioner*, 175 F. 2d 863 (C.A. 5, 1949); *Delta Stevedoring Co. v. Henderson, Deputy Commissioner*, 168 F. 2d 872 (C.A. 5, 1948).

The weight of evidence is not material upon judicial review of the deputy commissioner's findings: *Groom v. Cardillo, Deputy Commissioner*, 73 App. D.C. 358, 119 F. 2d 697 (1941); *Norton, Deputy Commissioner v. Warner Co.*, 321 U. S. 565 (1944); *So. Chicago Coal & Dock Co. v. Bassett*, 309 U. S. 251 (1940); *United States Fidelity & Guaranty Co. v. Britton, Deputy Commissioner*, 88 App. D.C. 293, 188 F. 2d 674 (1951); *Luckenbach Gulf S. S. Co., Inc. v. Henderson, Deputy Commissioner*, 133 F. 2d 305 (C.A. 5, 1943); *Henderson, Deputy Commissioner v. Pate Stevedoring Co., et al.*, 134 F. 2d 440 (C.A. 5, 1943); *Great American Indemnity Co. v. Cardillo, et al.*, 77 App. D.C. 306, 135 F. 2d 241 (1943); *Lumber Mutual Casualty Insurance Co. of N.Y. et al. v. Locke, Deputy Commissioner*, 60 F. 2d 25 (C.A. 2, 1932); *Southern S. S. Co. v. Norton, Deputy Commissioner*, 101 F. 2d 825 (C.A. 3, 1939); *Henderson, Deputy Commissioner v. Jones*, 110 F. 2d 952 (C.A. 5, 1940); *Fidelity & Casualty Co.*

of *N.Y. et al. v. Henderson, Deputy Commissioner*, 128 F. 2d 1019 (C.A. 5, 1942).

(b) The Evidence

Dr. William Suit Ritchie, a witness called by the claimant, testified in part as follows:

That on December 2, 1950, the deceased employee came to him on account of a rectal abscess, at which time examination showed his blood pressure was 140/80, his chest was negative, and there was no evidence of cardiovascular disease (Joint Appendix,* page 11); that a coronary embolism may or may not give "advance warning" (J.A. 11); that *the most common cause of a clot forming* (of which the employee apparently died) *is from a slowing of the circulation* (J.A. 12); that it is a degenerative thing and can come from high blood pressure or hardening of the arteries (J.A. 12); that embolisms are due "probably 50-50" to natural causes and external factors (trauma and injury), and *in the absence of trauma the cause usually is a slowing down of the circulation* (J.A. 12); that (after examining the death certificate—Claimant's Exhibit 1 (T.** 237-239)—which shows the cause of death as "coronary embolism" due to "exhaustion") if a man not one of his patients died in a few minutes he would not know how to determine whether the deceased "had any exhaustion or not" (J.A. 13).

Mrs. Jessie L. Vendemia, the claimant, testified in part as follows:

That she had been married to the deceased nearly 28 years, that he had had no serious sickness, and had been an iron worker since he was a young boy (J.A. 14); that for about six months before his death he appeared "just worn out" (J.A. 15); that he never complained of his work being too strenuous for him, was not looking for a lighter job and seemed to be happy in his work (J.A. 15, 16).

* hereinafter abbreviated J.A.

**T. refers to the typewritten transcript.

Anthony Joseph Cristaldi, a witness called by the claimant, testified in part as follows:

That his business is miscellaneous and ornamental iron work and his company employed the deceased from June of 1946 (J.A. 17); that the deceased never took any sick leave but "worked every day" (J.A. 17); that at the time of his death the employee was *making templates* which are measurement rods made from raw iron each weighing between 50 and 75 pounds (J.A. 18, 19); that some of the rails installed in the building were 16-foot rails weighing 400 pounds on which the deceased had *other men* to assist him; other rails were two feet long weighing 35 to 50 pounds, and that the deceased was working on all sizes of rails on the day of his death (J.A. 20, 21); that *making templates* is "a lot lighter" work than putting in 16-foot rails and steel stairs and "takes a lot more brains" which is the reason the deceased was on that particular job (J.A. 21); that on the day of his death the employee was working on the inside and was not doing outside work (J.A. 18, 22); that Mary Washington College, the site of the work, is on a high hill in the suburbs of Fredericksburg and is surrounded by lawns and trees (J.A. 22); that the deceased was in charge of the work and there were *four* men on the job (J.A. 22); that only Tyler [the son-in-law of the deceased] and the deceased were on the job when the employee died (J.A. 23).

Melvin Arthur Tyler, a witness called by the claimant, testified in part as follows:

That he had known the deceased for 15 or 20 years and was his son-in-law (J.A. 23); that he worked with the deceased most of the time for over two and a half years and, to his knowledge, the deceased had never been sick (J.A. 23); that he was working with the deceased at the time of the latter's death (J.A. 24); that on the day of his death the deceased and he were working on templates which weigh 50 or 75 pounds each (J.A. 24, 25); that they had to carry the templates up and down the stairs and to and from the truck in the process of fitting them to the stairs (J.A. 25-27); that they finished working with the templates about 11:45 a.m.

and the deceased then said they would "start on the rails on the porch" and they started "checking the rails" and working on them so that they would fit between the columns (J.A. 28); that they carried two rails from the concrete walk to the first floor and out on the walkway or balcony (J.A. 29); that the deceased used a 10 pound hammer in bonding and fitting the templates but he did not have to hit the templates "too hard" (J.A. 30, 31); that on the morning of the day he died the deceased also cleaned out the post holes in the stairs with a chisel, adjusted the rail sleeves in the columns with an acetylene torch and chisel and fitted rails to the sleeves (J.A. 32, 33); that after finishing lunch the deceased said he thought he had indigestion, got a drink of water and said he felt all right (J.A. 34); that 10 or 15 minutes after finishing lunch the deceased again said he did not "feel so good" and went to sit down in the truck (J.A. 34); that after doing some work he went to the truck to see how the deceased was and found him dead on the seat of the truck cab (J.A. 34); that the coroner arrived about an hour later and asked him if the deceased had been sick to which he replied, "No, he hasn't been sick, just seemed like himself" (J.A. 35); that the deceased had made no complaint about not feeling well while working on templates until 11:15 nor during the 45 minutes before lunch when he was working on the rails (J.A. 35).

Leo Alpert, a witness called by the claimant, testified in part as follows:

That he is a meteorologist (J.A. 37); that the highest temperature reported in Fredericksburg on May 27, 1952, the day the employee died, was 80 degrees Fahrenheit and the temperature at noon was about 78 or 79 degrees (J.A. 38); that the humidity at noon "probably was moderate, around 34 to 40 percent" (J.A. 38); that he would classify a day with 77 degrees temperature and 34-40 percent humidity as "a moderate day" for work (J.A. 38).

Dr. Perevil Meigs, a witness called by the claimant, testified that a person is more likely to get heat exhaustion if he exercises in hot weather (J.A. 39).

Dr. William S. Miller, a witness called by the claimant, testified in part as follows:

That in his opinion (from an examination of the death certificate) the cause of death of the employee was coronary heart disease which is not a "sudden process" but a progressive thing (J.A. 40); that coronary attacks come on frequently after a full meal due to the blood supply going to the digestive system and away from the heart (J.A. 40); that the term "coronary embolism" on the death certificate is "misplaced" since he thinks the certifying physician meant "coronary arteriosclerosis, heart disease" (J.A. 40, 41); that such certifying doctor probably meant a coronary thrombosis which is a clot formed in a coronary artery (J.A. 41); that the work activities of the employee on the day of his death "could" have aggravated an existing heart condition that he may have had (J.A. 41); that it would have to be "a pretty hot sun" to be able to say exposure to sun affects a man suffering from a heart condition since under ordinary conditions there are more heart attacks in cold weather than in hot weather (J.A. 42); that if the deceased had a pre-existing condition and had been doing normal labor all the time his muscles would have been used to it and he would have been adjusted to it but other type of work (sic) would [?] have aggravated the heart condition (J.A. 42); that, due to his lack of personal observation of the case, *he could not state definitely that the employee's work the day before caused his death* (J.A. 43); *that the employee's death probably occurred by coronary insufficiency or ischemia* CAUSED BY CORONARY ARTERIOSCLEROSIS (J.A. 43); that it is not at all uncommon for a person to have an attack of coronary thrombosis during his sleep, when completely at rest, which may terminate fatally before he awakes (J.A. 43); that it is possible for a natural condition to terminate in death due to coronary thrombosis without any exertion or other deleterious environment factors and *he has no assurance that the case of the deceased did not suggest such a condition* (J.A. 43, 44); that about seven out of 10 cases of deaths from coronary thrombosis are determined on autopsy to be appar-

ently due to natural cause without the intervention of overexertion (J.A. 44); *that coronary thrombosis has never been proved to be due to work* (J.A. 44); that it is a fair summary of his testimony to state the employee's fatal heart attack "could" have been aggravated by his work but it also "could" have been caused entirely by natural causes (J.A. 45).

There was received at the hearing as Claimant's Exhibit No. 1 (J.A. 46, 47) a certificate of death issued by the Commonwealth of Virginia stating in part as follows:

"Cause of death

(a) Coronary embolism

Due to (b) Exhaustion

Due to (c) (Died before physician arrived.)"

The certificate shows that the interval between onset and death was "a few minutes" and that no autopsy was performed.

Dr. John Eugene Cole testified by deposition at Fredericksburg, Virginia, on June 17, 1953, in part as follows:

That he is a physician and medical examiner for the City of Fredericksburg and County of Spotsylvania (J.A. 48); that upon being called in connection with the case of the deceased and arriving at the scene at 1:30 p. m., Standard Time, the employee was dead (J.A. 48); that he was told by the son-in-law that the deceased was apparently normal except for the pain across the chest which occurred while he was eating (J.A. 49); that from the symptoms as related by the son-in-law he thought the employee had died of a heart attack due to a blockage of the circulation to the heart; that without an autopsy he could not tell whether it was a thrombus or an embolism, the former being a stationary clot and the latter one floating within the blood stream (J.A. 49); that the term "exhaustion" in the death certificate means the heart was not capable due to the blockage, of supplying the body with its needs, and the "exhaustion" followed as the result of the heart attack; that there was no thought on his part that the deceased might

have been the victim of "heat" exhaustion after his examination of the body (J.A. 49, 50); that by "exhaustion" as stated in the death certificate he did not intend to give the inference the deceased might have become exhausted during his work (J.A. 50); that he has known cases of similar attacks early in the morning, the victims being aroused from sleep and there being no physical exertion, and cases of coronary thrombosis in patients who never did any strenuous work (J.A. 50); that, on the assumption the deceased was suffering from coronary occlusion, activity aggravated the pre-existing condition of the deceased but he had no history of the deceased having previously suffered from coronary occlusion (J.A. 50); that in his opinion the deceased did not have an embolism, thrombosis or occlusion prior to his complaints just after eating lunch on May 27, 1952 (J.A. 51); *that he cannot say whether the work activities of the deceased on May 26th or 27th did or did not hasten the death of the employee* (J.A. 51).

At the hearing before the Deputy Commissioner on September 9, 1953,

Dr. Bernard J. Walsh, a witness called by the employer and carrier, testified in part as follows:

That his specialty is limited to diseases of the heart and vascular system (J.A. 52); that the occurrence of coronary thrombosis, the blocking of a coronary artery by a clot, bears no relationship to the activity or inactivity of the patient (J.A. 52); that, on the basis of stated facts, he thought it probable that the deceased died of coronary thrombosis (J.A. 52); that the deceased could have as well died of a number of other things such as dissecting aneurism or a ruptured saccular aneurism and *there is no way of knowing the cause of death without an autopsy* (J.A. 52, 53); that the first evidence he finds of an attack of coronary thrombosis in the deceased is when the latter complained of chest pain that he considered to be indigestion toward the end of his lunch period (J.A. 53); that *he does not think the work activities of the deceased on May 27, 1952 or at any other time caused or materially ag-*

gravated his coronary thrombosis or whatever else may have caused his death (J.A. 53); that it cannot be said the employee's walking up and down steps on the day of his death aggravated the employee's heart condition, assuming he had such a condition, since the deceased had no symptoms until the end of his lunch hour (J.A. 54); that the employee's work after lunch could have aggravated the employee's coronary thrombosis, the first symptoms of which had occurred during his lunch period (J.A. 54, 55); that his carrying of two rails up the steps and other work immediately prior to his lunch period might that time (J.A. 55); that there is no reason to believe there was any relationship between the work performed by the deceased immediately prior to lunch and the death of the employee in the absence of complaint by the employee while doing such work or immediately thereafter (J.A. 56); that the work activities of the deceased on the day of his death "could" have aggravated the employee's heart condition, assuming that he had such a condition, but there is no evidence that such activities did aggravate any such condition (J.A. 56); that cases of fatal heart attacks without prior symptoms are frequent (J.A. 57); that the unduly hard work performed by the deceased for several days prior to his death "could" have been bringing on the heart attack but he does not think it did (J.A. 57); that he does not think the deceased had a coronary occlusion prior to 12:30 on the day of his death, nor that the work activities of the deceased prior to lunch on the day of his death aggravated any heart condition; that the employee's work activities after lunch probably did not aggravate his condition or hasten his death (J.A. 57, 58); that the fact of the death certificate showing cause of death as coronary embolism would not alter his testimony (J.A. 58).

Dr. John Alfred Reisinger, a witness called by the employer and carrier, testified in part as follows:

That he is cardiologist at Emergency Hospital (T. 279); that the occurrence of coronary thrombosis does not usually bear any relationship to the activity of the patient (J.A. 58); that it is probable the deceased had a myocardial

infarction as a result of a coronary occlusion or coronary thrombosis (J.A. 59); that, without an autopsy, there is no way of being certain about the cause of death but the history of typical pain and statistical probability would make it reasonable to give the diagnosis of coronary thrombosis causing myocardial infarction (J.A. 59); that, assuming the deceased died of coronary thrombosis, the first evidence of it is the pain experienced after eating lunch (J.A. 59); that a coronary thrombosis severe enough to cause death within minutes would be accompanied by pain and *if the deceased had such an attack during work on the morning of his death it would have precluded continuation of work by him* (J.A. 59); *that it is very unlikely or improbable the work activities of the deceased on the day of his death materially aggravated his attack of coronary thrombosis or whatever it was that caused his death* (J.A. 60); that the employee's walking up and down steps on the morning of his death probably would aggravate an existing "heart condition"—assuming the existence of such a condition *prior to the lunchtime pain* (J.A. 60, 61; that the employee's carrying of rails up the steps and fitting the rails into sleeves just before lunch "could" aggravate an existing heart condition (J.A. 61); that the work performed by the deceased after lunch "*might*" aggravate an existing heart condition (J.A. 62); that he disagrees with the testimony of Dr. Miller to the effect the strain of unduly hard work performed by the deceased for two days before the day of death *could* have brought on the heart attack because *he cannot conceive a situation in which strain would build up over a period of time so as to cause coronary thrombosis* (as distinguished from other forms of heart disease) sluggishness of circulation being more favorable to the deposition of a clot than when the circulation is more vigorous from exercise (J.A. 62, 63); that "all of us" have coronary arteriosclerosis or atherosclerosis that does not produce symptoms or damage to heart muscle, and until there is such damage "we do not have heart disease" (J.A. 62, 63); that *the cumulative work efforts of the deceased on*

the day of his death and on the previous day would not be important in an acute coronary thrombosis (J.A. 63); that he does not think there is any evidence at all that the deceased had a heart condition prior to the onset of pain [during his lunch period on the day of his death] (J.A. 64); that the deceased died of myocardial infarction due to coronary thrombosis or "a heart condition" but he did not assume the deceased had a heart condition prior to the first pain experienced by him (J.A. 64).

In view of the above it could not be validly stated that the finding of the deputy commissioner in effect that the death did not result from the employment was not supported by the evidence in the record considered as a whole. Since it is thus supported it should be accepted upon judicial review. *O'Leary v. Brown-Pacific-Maxon, Inc.*, 340 U. S. 504. As stated in the cited case it is immaterial that the evidence in the record did not "compel" such finding.

Appellant however contends that "(1) no consideration or (2) finding was made as to whether or not (a) the disease suffered by the deceased employee was or was not aggravated by his employment (b) which did or did not result in the employee's death."

There are several answers to this contention.

(1) There was no claim or proof of a pre-existing disease. On the contrary the evidence narrated above both lay and medical indicated that the deceased was in apparent good health to the time he ate his lunch. The deputy commissioner therefore would have been doing a superfluous thing in finding that the employment did not aggravate a non-existing previous condition.

(2) In order to establish a compensable case the evidence must show that an "injury" was sustained as defined in section 2(2) of the Act, 33 U. S. C. A. Sec. 902(2). "The term 'injury' means accidental injury or death arising out of and in the course of employment." The essential finding therefore in a compensation order is that the employee did or did not sustain *an injury* resulting in death arising out of and in the course of employment. An examination

of the compensation order will show that such was the finding which the deputy commissioner made. "The presumption is that all relevant circumstances have been weighed in the assessment" *Sweeting v. American Knife Co.*, 226 N. Y. 200, aff'd 250 U. S. 596. Moreover even if there had been issued (and proof) before the deputy commissioner as to the presence of a pre-existing disease and whether the employment aggravated such condition, the finding of the deputy commissioner to the effect that there was no injury was sufficiently broad to negative the inference that the employment aggravated a previous condition 146 ALR 174. As stated, the Act states nothing about aggravations; it merely refers to injuries. The deputy commissioner found that there was no injury.

Appellant next contends that the findings do not "truly disclose the facts, causes, circumstances and medical factors surrounding the death * * * and all such evidence (sic) has been omitted and apparently not considered". Appellant in substance apparently would have the deputy commissioner set forth the evidence; such inclusion in the order however would be improper. 146 ALR 141. Only the basic or ultimate *facts*, as distinguished from the *evidence*, should be included in the findings. The findings of the deputy commissioner in the order complained of are unusually detailed. It is of course *non sequitur* reasoning to say as appellant does that because the deputy commissioner did not include the evidence in his findings he did not consider such evidence in making his determination.

Appellant next contends that the deputy commissioner "has not afforded the surviving wife the statutory presumption that her claim comes within the provisions of the Act". Appellant refers to Section 20(a) to the effect that in the absence of substantial evidence to the contrary it shall be presumed that the claim comes within the provisions of the Act. In answer to this contention, it should be remembered that generally speaking, the burden is upon the compensation claimant to prove his or her entitlement to compensation. Numerous cases to this effect are cited

under Key No. 1339 et seq. under the subject of Workmen's Compensation, Vol. 33, 4th and 5th Decennial Digest, American Digest System. Cf. *Evelyn Gooding v. Willard*, 209 F. 2d 913 (C.A. 2, 1954). In some compensation statutes however there is a provision which in effect places the burden of proof as to *certain matters* upon the employer. Of such is Sec. 20(a) of the Act, 33 U.S.C. Sec. 920(a) to the effect that in the absence of substantial evidence to the contrary it shall be presumed that the claim comes within the Act. Assuming that said provision applies to other than jurisdictional matters (the phraseology "that the claim comes within the Act" would seem to indicate otherwise) such provision would apply only *until evidence is introduced* by the employer, whereupon the presumption would disappear and the case would be determined, not upon presumptions, but upon the evidence. *Del Vecchio v. Bowers*, 296 U. S. 280. In the instant case there were 301 pages of testimony, together with a 54 page deposition,—evidence submitted by the employer and the claimant respectively. The presumption therefore had obviously been displaced by the evidence, which controlled the result.

Appellant further contends that there was no substantial evidence to show that the death was not directly traceable to aggravation of a pre-existing disease in the course of employment. This contention disregards the many statements by the physicians who testified, *supra*, to the effect that the employment did not aggravate any pre-existing heart condition, if there was any such condition. Since this is so, it will not be necessary to discuss the supposition contained in appellant's contention namely that the burden was upon the employer to disprove, (before claimant established the fact even *prima facie*) that the employment aggravated a pre-existing condition, not shown to have existed, other than to say that the law imposes no such burden upon the employer.

CONCLUSION

In the view of the above, it is submitted that the Deputy Commissioner's finding is supported by substantial evidence on the record as a whole, that his findings of fact are sufficient, and that the compensation order is in accordance with law. The judgment of the court below was proper and should be affirmed.

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BRIEF FOR APPELLEES CRISS BROS. AND CO. AND
EMPLOYERS MUTUAL LIABILITY INSURANCE
COMPANY OF WISCONSIN, INC.

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,239

JESSIE L. VENDEMIA, Widow of Thomas Vendemia,
Appellant,

v.

- (1) ANTHONY J. CRISTALDI, PHILIP P. CRISTALDI, JOSEPH P. CRISTALDI, Partners, T/A Criss Bros. and Company;
- (2) EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY OF WISCONSIN, INC.;
- (3) P. J. DONOVAN, Deputy Commissioner, D. C. Compensation District, Bureau of Employees Compensation,
Appellees.

Appeal from the United States District Court for the
District of Columbia

United States Court of Appeals

For the G. A. CHADWICK, JR.
United States District Court for the District of Columbia JOHN A. BECK

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Insurance Co. of Wisconsin,
Inc.

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**BRIEF FOR APPELLEES CRISS BROS. AND CO. AND
EMPLOYERS MUTUAL LIABILITY INSURANCE
COMPANY OF WISCONSIN, INC.**

Appellees Criss Bros. and Co. and Employers Mutual Liability Insurance Company of Wisconsin, Inc., in opposition to the brief of appellant, adopt, in toto, the statement and argument contained in the brief filed herein by appellee Donovan.

Respectfully submitted,

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